Marquette Law Review

Volume 35
Issue 4 *Spring 1952*

Article 1

The Special Assessments of Municipal Corporations

Chester James Antieau

MARQUETTE LAW REVIEW

Vol. 35 SPRING, 1952 No. 4

THE SPECIAL ASSESSMENTS OF MUNICIPAL CORPORATIONS*

CHESTER JAMES ANTIEAU**

Probably no activity of municipal corporations has occasioned more litigation or occupied more time of administrative, legal and quasi-judicial officers than special assessments. A re-examination of underlying principles and recent case and statutory developments should prove profitable.

The principle special assessment areas of litigation are (1) whether the particular improvement is "local" so as to justify a special assessment; (2) the permissible procedures in determining the amount of assessment and in levying it upon the property; (3) the properties within the city subject to assessment; (4) what can be included in the cost of an improvement to be assessed; (5) limitations upon the amount of individual assessments; (6) appeal and relief from special assessments; (7) enforcement of assessments against delinquent property owners; and (8) municipal liability to investors upon special assessment obligations.

Municipal corporations have no inherent power to levy special assessments,[1] nor is the power implied from the power to levy taxes or the power to make improvements.[2] However, today municipal power to impose special assessments is regularly conferred by statutes and charters.[3] And there are Eminent Domain statutes, such as the "Kline

* One of a series of articles examining the present status of the law of municipal corporations, appearing soon in book form. Other articles in the series appear in current issues of the TEMPLE LAW QUARTERLY, MISSOURI LAW REVIEW, WASHINGTON UUIVERSITY LAW QUARTERLY, WEST VIRGINIA LAW REVIEW, UNIVERSITY OF DETROIT LAW JOURNAL, ROCKY MOUNTAIN LAW REVIEW, KENTUCKY LAW JOURNAL, and UNIVERSITY OF KANSAS CITY LAW REVIEW.

** J.D., Detroit College of Law; S.J.D., University of Michigan; Member of the Michigan and Kansas Bars; Professor of Law, Washburn University.

[1] Daniel v. Smith, 179 Ga. 79, 175 S.E. 240 (1934); Motz v. Detroit, 18 Mich. 495 (1869); Des Moines City Ry. Co. v. Des Moines, 159 N.W. 450 (Iowa, 1916); Indiana Union Traction Co. v. Gough, 54 Ind. App. 438, 102 N.E. 453 (1913); Moore v. City of Nampa, 18 F. (2d) 860 (9th Cir., 1927), affd. 276 U.S. 536 48 S.Ct. 340, 72 L.Ed. 688; City of Hollywood, Davis, 154 Fla. 785, 19 S. (2d) 111 (1944); Bass v. Casper, 28 Wyo. 387, 205 P. 1008, 208 P. 439 (1922).

[2] Macon v. Patty, 57 Miss. 378, 34 Am. Rep. 451 (1879); Chicago, R.I. & P. Ry. v. Ottumwa, 112 Iowa 300, 83 N.W. 1074 (1900); City of Charlotte v. Kavanaugh, 221 N.C. 259, 20 S.E. (2d) 97 (1942).

[3] BURNS IND. STAT. ANN. (1950), Sec. 48-2701; GEN. STAT. KANSAS (1935), Sec. 12-601 ff.; MINN. STAT. (1945), Sec. 412. 26, 428.01; MICHIGAN STAT. ANN., Sec. 5.2077; NEBRASKA COMP. STAT. (1929), Sec. 17-432 as amended by Laws, 1933, c. 136, 20; NEW MEXICO STAT. ANN. (1941), Sec. 14-3304; WYOMING COMP. STAT. ANN. (1945), Sec. 29-2001; IDAHO CODE (1932), Sec. 49-2401; SOUTH CAROLINA CONSTITUTION, Art. 10, 17 and CODE OF SOUTH

Law" in Wisconsin,[4] authorizing municipalities to acquire property for a variety of purposes and to spread the cost of the improvement by special assessment over the district benefited. It is the general rule that grants of power to municipalities to impose special assessments must be strictly construed and followed.[5]

A special assessment is not a tax within the constitutional limitations upon the amount of taxation.[6] Nor is it a tax subject to the constitutional provisions requiring uniformity and equality of taxation.[7] And constitutional requirements that all property be taxed in proportion to value do not ordinarily apply to special assessments.[8]

NECESSITY THAT THE IMPROVEMENT BE "LOCAL"

To justify a special assessment upon nearby property owners the improvement must be "local," that is, it must benefit the adjoining property owners in a way and to a degree not enjoyed by the community as a whole.[9] Sometimes it is said that the "primary" effect must be to benefit the immediate locality.[10] The fact that there is some benefit to the general public does not prove that an improvement is not a "local" one which may properly be paid for by special assessment.[11] The determination by municipal officials that an improvement confers local and special benefits will not be disturbed "in the absence of a clear showing that such decision was wholly arbitrary, merely capricious, or

---

CAROLINA (1942), Sec. 7374, 7376; PAGE'S OHIO GEN. CODE ANN., Sec. 3812; Petition of Fuller, 258 Mich. 211, 241 N.W. 899 (1932); Baird v. City of Wichita, 128 Kan. 100, 276 Pac. 77 (1929): Parker v. Wallace, 142 N.Y.S. 523, 80 Misc. 425 (1913); Winnetka v. Taylor, 288 Ill. 624, 124 N.E. 348 (1919).

[4] Wis. Laws (1931), Ch. 275 (as amended).

[5] Bluffton v. Miller, 33 Ind. App. 521, 70 N.W. 989 (1904); Buchingham v. Kerr, 68 Ind. App. 290, 120 N.E. 422 (1918); Fought v. Murdoch, 114 W. Va. 445, 172 S.E. 536 (1933); Besack v. City of Beatrice, 47 N.W. (2d) 356 (Neb., (1951); Barnhart v. City of Grand Rapids, 237 Mich. 90, 211 N.W. 96 (1926); Marquette Homes v. Town of Greenfield, 244 Wis. 588, 13 N.W. (2d) 61 (1944).

[6] Commerce Trust Co. v. Syndicate Lot Co., 208 Mo. App. 261, 232 S.W. 1055, 235 S.W. 150 (1921); Storrie v. Houston St. Ry., 92 Tex. 129, 46 S.W. 796 (1898); Storrie v. Woessner, 47 S.W. 837 (Tex. Civ. App., 1898); Graham v. City of Saginaw, 317 Mich. 427, 27 N.W. (2d) 42 (1947); Re Petition of Auditor General, 226 Mich. 170, 197 N.W. 552 (1924) and cases cited therein.

[7] City of Milwaukee v. Taylor, 229 Wis. 328, 282 N.W. 448 (1938); Steele v. City of Waycross, 190 Ga. 816, 10 S.E. (2d) 867 (1940); Hagman v. City of New Orleans, 190 La. 796, 182 S. 753 (1938); Supervisors of Manheim Tp. v. Workman, 350 Pa. 168, 38 A. (2d) 273 (1944); City of Detroit v. Weil, 180 Mich. 593, 147 N.W. 550 (1914); Auditor General v. Konwinski, 244 Mich. 384, 221 N.W. 125 (1928).

[8] State ex rel. Jones v. Nolte, 350 Mo. 271, 165 S.W. (2d) 632 (1942).

[9] City of Waukegan v. DeWolf, 258 Ill. 374, 101 N.E. 532 (1913); Re Shilshole Ave., 85 Wash. 522, 148 P. 781 (1913); Connecticut Ry. and Ltg. Co. v. City of Waterbury, 127 Conn. 617, 18 A. (2d) 700 (1941); State ex rel. City of Huntinton v. Heffley, 127 W. Va. 254, 32 S.E. (2d) 456 (1944).

[10] Hinman v. Temple, 133 Neb. 268, 274 N.W. 605, 608 (1937).

[11] Henry Bickel Co. v. City of Louisville, 282 Ky. 38, 137 S.W. (2d) 717, 127 A.L.R. 1084 (1940); City of Waukegan v. DeWolf, 258 Ill. 374, 101 N.E. 532 (1913); Hinman v. Temple, 133 Neb. 268, 274 N.W. 605 (1937).

actuated by fraud or bad faith."[12] Special assessments and general taxation may be combined in financing local improvements.[13] The special assessment must, of course, be for a "public" improvement.[14]

Street improvements such as paving,[15] widening,[16] curbing and guttering,[17] as well as planting shade trees,[18] are almost always considered local improvements that can be paid for by special assessments. There is, nevertheless, some judicial reluctance to permit special assessments for boulevards[19] and "white ways"[20] of principal benefit to motorists and not the adjoining property owners. The cases are about evenly divided as to the propriety of special assessments for bridges and viaducts.[21] Statutes frequently authorize the inclusion in paving contracts of provisions whereby the paving contractor guarantees to maintain the pavement for a period of years,[22] and it is frequently held that special assessments can be levied for repaving and repairs,[23] although there are many contra cases especially where there is a clear duty upon the municipality to maintain streets in repair.[24] Many statutes permit

[12] Posselius v. City of Detroit, 44 F. (2d) 395, 398 (D. Mich., 1930); Johnson v. Village of Bellwood, 338 Ill. 605, 170 N.E. 683 (1930).

[13] BURNS IND. STAT. ANN. (1950), Sec. 48-2701; People ex rel. Chicago Title & Trust Co. v. Village of Glencoe, 372 Ill. 280, 23 N.E. (2d) 697 (1939); Dix-Ferndale Taxpayers Assn. v. City of Detroit, 258 Mich. 390, 242 N.W. 732 (1932).

[14] Altmar v. Kolburn, 45 N. Mex. 453, 116 P. (2d) 812, 136 A.L.R. 554 (1941); Irish v. Hahn, 208 Cal. 339, 281 P. 385, 66 A.L.R. 1382 (1929); Chamberlain v. Cleveland, 34 Oh. St. 551 (1878).

[15] W. VA. CODE (1943), Sec. 560; MICH. STAT. ANN., Sec. 5.1814; GEN. STAT. KANSAS (1935), Sec. 12-601; In re Aurora Avenue, Seattle, 180 Wash. 523, 41 P. (2d) 143, 96 A.L.R. 1374 (1935); Posselius v. City of Detroit 44 F. (2d) 395 (D. Mich., 1930); Sanderson v. Seattle, 95 Wash. 582, 164 Pac. 217 (1917); Theisen v. Detroit, 254 Mich. 338, 237 N.W. 46 (1931); MILWAUKEE, WIS., CHARTER (1934), Sec. 11.02.

[16] Vaughn v. Sterling Natl. Bk., 124 S.W. (2d) 440 (Tex. Civ. App. 1939).

[17] Manchester v. Straw, 86 N.H. 390, 169 A. 592 (1933); In re Burmeister, 76 N.Y. 174 (1879); Notes, 8 ILL. L. REV. 340 (1914), 14 ILL. L. REV. 523 (1920); MILWAUKEE, WIS. CHARTER (1934), Sec. 11.02.

[18] GEN. STAT. KANSAS (1935), 13-429; Heller v. Garden City, 58 Kan. 263, 48 P. 841 (1897).

[19] Abar v. Detroit, 278 Mich. 228, 270, N.W. 277 (1936).

[20] Utley v. St. Petersburg, 106 Fla. 692, 144 S. 53 (1932).

[21] Proper: L. & N. Ry. v. City of E. St. Louis, 134 Ill. 656, 25 N.E. 962 (1890); Ferguson v. McLain, 113 Ark. 193, 168 S.W. 127 (1914). Improper: City of Waukegan v. DeWolf, 258 Ill. 374, 101 N.E. 532 (1913); City of Chicago Hts. v. Walls, 319 Ill. 411, 150 N.E. 241 (1926), noted in 21 ILL. L. REV. 54 (1926); Hinman v. Temple, 133 Neb. 268, 274 N.W. 605 (1937). Note, 111 A.L.R. 1222.

[22] GEN. STAT. KANSAS (1935), Sec. 12-609; BURNS IND. STAT. ANN. (1950), Sec. 48-2701; WYOMING COMP. STAT. ANN. (1945), 29-2002.

[23] Wilson v. Inhabitants of City of Trenton, 61 N.J.L. 599, 40 A. 575 (1898); Shank v. Smith, 157 Ind. 401, 61 N.E. 932 (1901); City of Schenectady v. Trustees of Union College, 66 Hun. 179, 21 N.Y.S. 147 (1892); Morse v. City of West-port, 110 Mo. 502, 19 S.W. 831 (1892); Wilkins v. Detroit, 46 Mich. 120, 8 N.W. 701, 9 N.W. 427 (1881); Allen v. Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

[24] Crane v. W. Chicago Park Commrs., 153 Ill. 348, 38 N.E. 943 (1894); Brown v. Jenks, 98 Cal. 10, 32 P. 701 (1893); City of Portland v. Bituminous Paving Co., 33 Ore. 307, 52 Pac. 28 (1898); Boyd v. City of Milwaukee, 92 Wis. 456, 66 N.W. 603 (1896); Verdin v. City of St. Louis, 27 S.W. 447 (Mo., 1894);

special assessments for oiling and sprinkling streets,[25] and there are cases recognizing the propriety of special assessments for such purposes,[26] although probably as many cases are opposed.[27] Practically everywhere the construction of sidewalks can be financed by special assessments,[28] and there is statutory authority for the imposition of special assessments for removing snow and ice from walks, as well as for cutting weeds in vacant lots.[29]

Neighborhood parks especially benefitting a restricted locality seem capable of being paid for by special assessments,[30] and there is authority supporting special assessments for municipal parking lots.[31] Sewers and drains can virtually everywhere be paid for by special assessments.[32] Although community waterworks may not justify special assessments,[33] it is clear that local watermains may be thus financed.[34] And an interesting case indicates that the cost of fire protection can be assessed against a local district.[35] Although the cost of power houses and generating

People v. Maher, 56 Hun. 81, 9 N.Y.S. 94 (1890); Wreford v. Detroit, 132 Mich. 348, 93 N.W. 876 (1903); Mayor and Aldermen of Savannah v. Knight, 172 Ga. 371, 157 S.E. 309, 73 A.L.R. 1295 (1931) (enjoining assessment for street repairs where damage was done by buses permitted on street by city).

[25] MINN. STAT. (1945), Sec. 412.27; IDAHO CODE (1947), Sec. 50-1104; NEW MEX. STAT. ANN. (1941), Sec. 14-3305; BURNS IND. STAT. ANN., Sec. 48-3202; GEN. STAT. KANSAS (1935), Sec. 12-666, 12-1645.

[26] Reinken v. Fuehring, 130 Ind. 382, 30 N.E. 414 (1892); Sears v. Boston, 173 Mass. 71, 53 N.E. 138 (1899); City of Roswell v. Bateman, 20 N.M. 77, 146 P. 950 (1915).

[27] Stevens v. Port Huron, 149 Mich. 536, 113 N.W. 291 (1907), noted in 21 HARV. L. REV. 533 (1908); City of Kalamazoo v. Crawford, 154 Mich. 58, 117 N.W. 572 (1908), noted in 7 MICH. L. REV. 184 (1908); City of Chicago v. Blair, 149 Ill. 310, 36 N.E. 829 (1893); Ownsboro v. Sweeney, 129 Ky. 607, 111 S.W. 364 (1908). Notes, 24 L.R.A. 412, 18 L.R.A. (n.s.) 182.

[28] WYO. COMP. STAT. ANN. (1945), Sec. 29-2102; MINN. STAT. (1945), Sec. 428.49; IDAHO CODE (1947), Sec. 50-1105; PAGE'S OHIO GEN. CODE ANN., Sec. 3860; MICH. STAT. ANN. Sec. 5.1820; GEN. STAT. KANSAS (1935, supp. 1947), Sec. 12-1808; Speer v. Athens, 85 Ga. 49, 11 S.E. 802, 9 L.R.A. 402 (1890); In re Burmeister, 76 N.Y. 174 (1879); City of Shreveport v. Selber, 21 S. (2d) 738 (La. App., 1945).

[29] MILWAUKEE, WIS., CHARTER (1934), Sec. 11.24; IDAHO CODE (1947), Sec. 50-1147; GEN. STAT. KANSAS (1935), 13-440; and see MILWAUKEE, WIS. CHARTER (1934), Sec. 11.03 (Assessments for Grading and Seeding Parkings).

[30] MINN. STAT. (1945), 430.01 ff.; GEN. STAT. KANSAS (1935), 13-2523; Winnetka Park District v. Hopkins, 371 Ill. 46, 20 N.E. (2d) 58 (1939).

[31] Ambassador Mgt. Corp. v. Inc. Village of Hempstead, 186 Misc. 74, 58 N.Y.S. (2d) 880, affd. 62 N.Y.S. (2d) 165, app. dism. 296 N.Y. 666, 69 N.E. (2d) 819, cert. dnd. 330 U.S. 835; Wittier v. Dixon, 24 Cal. (2) 664, 151 P. (2d) 57 (1944); GEN. STAT. KANSAS (1935, supp. 1947), Sec. 13-1375, 13-1383 (permitting assessment for upkeep as well); Note, 153 A.L.R. 961.

[32] W. VA. CODE (1943), Sec. 561; GEN. STAT. KANSAS (1935, supp. 1947), Sec. 12-631a; Kuick v. City of Grand Rapids, 200 Mich. 582, 166 N.W. 979 (1918); Lucas v. Board of Commrs. of Town of Montclair, 128 N.J.L. 152, 24 A. (2d) 831 (1942); Johnson v. Village of Bellwood, 338, Ill. 605, 170 N.E. 683 (1930); Wray v. Fry, 158 Ind. 92, 62 N.E. 1004 (1902); W. F. Stewart Co. v. Flint, 147 Mich. 697, 111 N.W. 352 (1907); Wis. Laws (1921), Ch. 367.

[33] *Compare* Village of Morgan Park v. Wiswall, 155 Ill. 262, 40 N.E. 611 (1895), *with* GEN. STAT. KANSAS (1935), Sec. 13-802 (authorizing special assessment for high-pressure waterworks).

[34] Hughes v. City of Momence, 163 Ill. 535, 45 N.E. 300 (1896); Hewes v. Glos, 170 Ill. 436, 48 N.E. 922 (1897).

[35] McCoy v. City of Sistersville, 120 W. Va. 471, 199 S.E. 260 (1938).

plants probably can not be financed by special assessments,[36] such levies can be imposed to cover the costs of underground conduits,[37] local lamps and wires, poles and conductors.[38]

There is a rule in Pennsylvania that special assessments can be levied only for initial construction or installation of a permanent improvement and not for continuing maintenance or repair; an assessment for special benefits may be imposed only once for any given improvement.[39]

Assessment Procedure

Statutes and charters customarily provide that most municipal improvements to be financed by special assessment may be initiated by petition of property owners affected.[40] Where a petition is required and it is overlooked or defectively executed the assessment will be void.[41] Whether the necessary signatures to a petition have been properly procured is something, according to the majority rule, that cannot be conclusively determined by a local board and, unless the contestant is estopped, may be inquired into in any proper judicial proceeding.[42] There is a minority position that a finding by the governmental body that the petition is sufficient is not subject to collateral attack.[43] And there are statutes making the conclusion of the council as to the adequacy of the petition final if not objected to within a limited time.[44] Even under the majority position, the consummation of an assessment raises a presumption that the initiatory petition was sufficient.[45]

---

[36] Ewart v. Village of Western Springs, 180 Ill. 318, 54 N.E. 478 (1899). See also Putman v. Grand Rapids, 58 Mich. 416, 25 N.W. 330 (1885).

[37] Irish v. Hahn, 208 Cal. 339, 281 Pac. 385 (1929); Note, 66 A.L.R. 1389..

[38] Page's Ohio Gen. Code Ann., Sec. 3812-4, 3842-1; Wyoming Comp. Stat. Ann. (1945), Sec. 29-2202; Michigan Stat. Ann., Sec. 5.1825; Gen. Stat. Kansas (1935), Sec. 14-534; Roberts v. City of Los. Angeles, 7 Cal. (2d) 477, 61 P. (2d) 323, (1936); Fisher v. Astoria, 126 Ore. 268, 269 Pac. 853 (1928); City of Springfield v. Springfield Ry., 296 Ill. 17, 129 N.E. 580 (1921); Notes, L.R.A. 1917A, 1098, 60 A.L.R. 272.

[39] Supervisors of Manheim Tp. v. Workman, 350 Pa. 168, 38 A. (2d) 73 (1944).

[40] Burns Indiana Stat. Ann. (1950), Sec. 48-2701, 48-2833, 48-3302; Minn. Stat. (1945), Sec. 412.27, 428.62, 429.03; Page's Ohio Gen. Code Ann., Sec. 5.1827; New Mex. Stat. Ann. (1941), 14-3323; Milwaukee, Wis. Charter (1934), Sec. 11.13.

[41] Zeigler v. Hopkins, 117 U.S. 683 (1886); Meritt v. City of Kewanee, 175 Ill. 537, 51 N.E. 867 (1898); Long v. City of Monroe, 265 Mich. 425, 251 N.W. 582 (1933) and see cases in following note.

[42] Steinmuller v. Kansas City, 3Kan. App. 45, 44 P. 600 (1896); Nichols v. Tallmadge, 260 Mich. 576, 245 N.W. 521 (1932); Auditor General v. Fisher, 84 Mich. 128, 47 N.W. 574 (1890) and see cases in preceding note; Note, 95 A.L.R. 116.

[43] Bukaty v. Kansas City, 137 Kan. 520, 21 P. (2d) 399 (1933); Avis v. Allen, 83 W.Va. 789, 99 S.E. 188 (1919).

[44] Gallimore v. Thomasville, 191 N.C. 648, 132 S.E. 657 (1926); Kansas City v. Trotter, 9 Kan. App. 222, 59 P. 679 (1900)); Ruddell v. Monday, 179 Ark. 920, 18 S.W. (2d) 910 (1929).

[45] McVey v. Danville, 188 Ill. 428, 58 N.E. 955 (1900); Brady v. City of Detroit, 166 Mich. 252, 137 N.W. 569 (1911); Pasche v. South St. Joseph Town Co., 174 Mo. App. 614, 161 S.W. 322 (1913).

Under other statutes the primary step is a preliminary resolution of intention or declaration of necessity by the governing body of the municipality[46] or a statutory board, such as the Board of Assessment under Wisconsin's "Kline Law."[47] Where resolutions are required by statute their satisfactory passage is jurisdictional.[48] And it follows that an assessment including the cost of work not embraced in a resolution of intention is wholly void.[49] Customarily the resolution must state the character, location and extent of the improvement.[50] Sometimes notice must be given before the council or statutory body adopts such a resolution,[51] but more commonly the resolution must be published and an opportunity provided to file protests thereto.[52] Where such notice is not given a subsequent assessment is void.[53] Virginia has an interesting statute providing for docketing an abstract of the resolution or ordinance, together with the estimated amount of assessment, in the office of the clerk charged with the recordation of deeds, and this constitutes notice to all purchasers of the property.[54]

Frequently the preliminary resolution is followed by councilmanic creation of a district embracing all land benefited and enhanced in value by the improvement.[55] This is the method set forth in Wisconsin's "Kline Law."[56] Although in most communities city engineers and subordinate boards prepare the general outlines of the benefit district, it is the general rule that the governing body's duty to demarcate

---

[46] W. Va. CODE (1943), Sec. 563; WYO. COMP. STAT. ANN. (1945), Sec. 29-2006; BURNS IND. STAT. ANN. (1950), Sec. 48-2701, 48-2801; MICH. STAT. ANN., Sec. 5.1827; GEN. STAT. KANSAS (1935), Sec. 12-602; PAGE'S OHIO GEN. CODE ANN., Sec. 3812-2, 3814; NEW MEXICO STAT. ANN. (1941), Sec. 14-3316 requires a "provisional order"; (in large cities the councilman's action often follows recommendations of Commissioners of Public Works); MILWAUKEE, WIS. CHARTER (1934), Sec. 11.13.

[47] Wis. Laws (1931), Ch. 275 (as amended).

[48] Shapard v. Missoula, 49 Mont. 269, 141 P. 544 (1914); Partridge v. Lucas, 99 Cal. 519, 33 P. 1082 (1893); Reliance Auto & Supply Co. v. City of Jackson, 244 Mich. 232, 221 N.W. 290 (1928).

[49] Partridge v. Lucas, 99 Cal. 519, 33 P. 1082 (1893).

[50] Bass v. Casper, 28 Wyo. 387, 205 P. 1008, 208 P. 439 (1922); City of Chicago v. Iron Co., 293 Ill. 109, 127 N.E. 349 (1920); Evans v. City of Helena, 60 Mont. 577, 199 P. 445 (1921); Buckley v. City of Tacoma, 9 Wash. 253, 37 P. 441 (1894); Schwiesau v. Mahon, 128 Cal. 114, 60 P. 683 (1900).

[51] W. VA. CODE (1943), Sec. 563 (requires thirty days notice before a resolution of intention is passed).

[52] BURNS IND. STAT. ANN. (1950), Sec. 48-2701; WYOMING COMP. STAT. ANN. (1945), Sec. 29-2007; MINN. STAT. (1945), Sec. 429.22; NEW MEXICO STAT. ANN. (1941), Sec. 14-3308.

[53] Fogle & Co. v. Ohio Sav. Bk., 116 W. Va. 713, 182 S.E. 871 (1935); Joyce v. Barron, 67 Ohio St. 264, 65 N.E. 1001 (1902); Crawford v. Detroit, 169 Mich. 293, 135 N.W. 314 (1912).

[54] VIRGINIA CODE (1950), Sec. 15-677.

[55] GEN. STAT. KANSAS (1935), Sec. 12-617; MINN. STAT. (1945), Sec. 428-05; PAGE'S OHIO GEN. CODE ANN., Sec. 3872; WYOMING COMP. STAT. ANN., (1945), Sec. 29-2201; Roswell v. Bateman, 20 N. Mex. 77, 146 P. 950 (1915); Whitney v. Common Council of Village of Hudson, 69 Mich. 189, 37 N.W. 184 (1888).

[56] Wis. Laws (1931), Ch. 275 (as amended).

assessment districts can not be delegated.[57] There must thus be final approval of any submitted plan by the municipal council or board of commissioners exercising its own independent judgment. Fixing the bounds of an assessment district is usually said to be in the discretion of the municipal legislature, and courts will generally not interfere with the outlines of the district[58] unless they are unclear,[59] or arbitrarily and unreasonably fixed without relation to benefit.[60]

Soon after the petition is filed or the resolution passed according to typical statutes and charter plans, specifications and cost estimates are prepared and these must ordinarily be open for public inspection.[61]

The United States Constitution is not violated by failure to afford a public hearing on the necessity of the contemplated improvement, so long as opportunity is given before the assessment is finally imposed,[62] and similarly state constitutions probably will not require a hearing upon the legislative determination of necessity.[63] However, statutes and charters often prescribe such a public hearing and then it is mandatory that it be properly noticed and held.[64] Such notice must be in strict conformity to the statute or charter and customarily it must give full information as to the kind, character and location of the work and the materials intended.[65] Similarly, any substantial change from the

[57] Scofield v. City of Lansing, 17 Mich. 437 (1868).

[58] Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909); Botts v. City of Valley Center, 124 Kan. 9, 257 P. 226 (1927); Roswell v. Bateman, 20 N. Mex. 77, 146 P. 950 (1915); Brown v. City of Saginaw, 107 Mich. 643, 65 N.W. 601 (1895). There is "a presumption of good faith and authority on the part of the municipalities in establishing such assessment districts." Petition of Auditor General, 300 Mich. 80, 1 N.W. (2d) 461 (1942).

[59] Whitney v. Common Council of Village of Hudson, 69 Mich. 189, 37 N.W. 184 (1888).

[60] Lawrence v. City of Grand Rapids, 166 Mich. 134, 131 N.W. 581 (1911); Dix-Ferndale Taxpayers Assn. v. Detroit, 258 Mich. 390, 242 N.W. 731 (1932); Corby v. Detroit, 180 Mich. 208, 146 N.W. 670 (1914). Note Besac v. City of Beatrice, 47 N.W. (2d) (Neb., 1951), (Invalidating a sewer assessment in one district for sewer section in another district although city council had power to establish the districts). Semble: City of Ft. Scott v. Kaufman, 44 Kan. 137, 24 P. 64 (1890).

[61] WYOMING COMP. STAT. ANN. (1945), Sec. 29-2012; W. VA. CODE (1943), Sec. 563; MINN. STAT. (1945), Sec. 428.01, 431.10; PAGES OHIO GEN. CODE ANN., Sec. 3816; BURNS IND. STAT. ANN. (1950), Sec. 48-2701, 48-2805; MICH. STAT. ANN., Sec. 5.1828. Bay City Traction & Elec. Co. v. Bay City, 155 Mich. 393, 119 N.W. 440 (1909); Swigart v. City of Barberton, 51 N.E. (2d) 419 (Ohio App., 1943); Weber v. Detroit, 158 Mich. 149, 122 N.W. 570 (1909); Richardi v. Village of Bellaire, 153 Mich. 560, 116 N.W. 1066 (1908).

[62] Utley v. City of St. Petersburg, 292 U.S. 106 (1934); Goodrich v. Detroit, 184 U.S. 432 (1902); Hagar v. Reclamation Dist. No. 108, 111 U.S. 701 (1884).

[63] Hodges v. Roswell, 31 N. Mex. 384, 247 P. 310 (1926); Stone v. City of Jefferson, 317 Mo. 1, 293 S.W. 780 (1927); Thayer Lumber Co. v. City of Muskegon, 152 Mich. 59, 115 N.W. 957 (1908); Note, 52 A.L.R. 883.

[64] PAGE'S OHIO GEN. CODE ANN., Sec. 3818; MICH STAT. ANN., Sec. 5.1828; VA. CODE (1950), Sec. 15-670; BURNS IND. STAT. ANN. (1950), 48-2701, 48-2803; MINN. STAT. (1945), 428.04, 429.04, 429.05; N. MEX. STAT. ANN. (1941), Sec. 14.3309, 14.3318; Johnson v. Village of Bellwood, 338 Ill. 605, 170 N.E. 683 (1930); Shapard v. Missoula, 49 Mont. 629, 141 P. 544 (1914); Auditor General v. Calkins, 136 Mich. 1, 98 N.W. 742 (1904).

[65] Phoenix Brick and Constr. Co. v. Gentry County, 257 Mo. 392, 166 S.W. 1034

published description of the contemplated improvement will invalidate the assessment.[66] After the public hearing the council is frequently required to enact an ordinance or pass a resolution ordering the improvement and indicating the total amount to be assessed.[67] Frequently these ordinances must be passed by more than simple majorities,[68] and publication requirements are common.[69] The determination of the necessity for the improvement by the municipal authorities is generally conclusive and will not be disturbed by the judiciary,[70] but when the occasional case of arbitrariness or fraud appears, the courts will interfere and enjoin the improvement.[71] Statutes and charters very often require bidding before public improvement contracts are let and failure to advertise for bids will invalidate the assessment procedure.[72]

Statutes and charters designate the council or board that is to determine the amount of individual assessments.[73] In small communities it is often possible for the council itself to inspect properties benefited and calculate the amount of individual assessments, but ordinarily the task of inspecting the very numerous properties is delegated to a public officer or board instructed to prepare and return an assessment roll.[74] So long as the council or other designated body examines, reviews and confirms the roll prepared by the subordinate the delegation will not be invalid, the courts theorizing that the

---

(1914); Thayer Lumber Co. v. City of Muskegon, 152 Mich. 59, 115 N.W. 957 (1908); Mills v. Detroit, 95 Mich. 422, 54 N.W. 897 (1893). *Notice and Hearing in Tax Assessments*, 33 ILL. L. REV. 575 (1939).

[66] City of Chicago v. Jerome, 301 Ill. 587, 134 N.E. 92 (1922); Clinton v. Spencer, 250 Mich. 135, 229 N.W. 609 (1930).

[67] WYOMING COMP. STAT. ANN. (1945), Sec. 29-2011; W. VA. CODE (1943), Sec. 565; MINN. STAT. A1945), Sec. 428-08; PAGE'S OHIO GEN. CODE ANN., Sec. 3825, 3879, N. MEX. STAT. ANN. (1941, Sec. 14-3311, 14-3320.

[68] PAGE'S OHIO GEN. CODE ANN., Sec. 3835. Whitney v. Common Council of Village of Hudson, 69 Mich. 189, 37 N.W. 184 (1888).

[69] PAGE'S OHIO GEN. CODE ANN., Sec. 3842-2.

[70] "The law having bested the function of determining the necessity for an improvement in the governing body of the city it follows that its determination is controlling and when made in good faith is not open to review by the courts." Palmer v. Mayor and Councilmen of Medicine Lodge, 123 Kan. 387, 389, 255 P. 67 (1927); City o Venice v. State, 96 Fla. 527, 118 S. 308 1928), noted in 27 MICH. L. REV. 588 (1929) (even where mayor and council were officers of the development assn.); City of Carbondale v. Reith, 316 Ill. 538, 147 N.E. 422 (1925); Shimmons v. City of Saginaw, 104 Mich. 511, 62 N.W. 725 (1895); Damron v. City of Huntington, 82 W. Va. 401 96 S.E. 53 (1918).

[71] Wilkin v. Robinson, 292 Ill. 510, 127 N.E. 90 (1920); City of Chicago v. Brown, 205 Ill. 568, 69 N.E. 65 (1903); South Park Commrs. v. Pearce, 248 Ill. 578, 94 N.E. 33 (1911); City of Chicago v. Municipal Engrg. & Contracting Co., 292 Ill. 614, 127 N.E. 65 (1920); City of Chicago v. Engineering Co., 283 Ill. 160, 119 N.E. 40 (1918).

[72] City of Yonkers v. Yonkers R. Co., 169 Misc. 102 6 N.Y.S. (2d) 519 (1938); Whitney v. Common Council of Village of Hudson, 69 Mich. 189, 37 N.W. 184 (1888). BURNS IND. STAT. ANN. (1950), Sec. 48-2701.

[73] MINN. STAT. (1945), Sec. 429.10; MICH. STAT. ANN., Sec. 5.1826; Scofield v. City of Lansing, 17 Mich. 437 (1868).

[74] MILWAUKEE, WIS. CHARTER (1934), Sec. 11.14.

examination in detail of several premises involves merely administrative functions.[75] There is not doubt that a prejudicial interest in the person making the assessment should invalidate it,[76] but the record indicates the judiciary will not readily find such an interest. A public official is not, because of his office, ineligible to be an assessor,[77] and the great weight of authority holds that the ownership of property in the city, and even in the area affected, does not disqualify,[78] although there is in the latter instance a minority view,[79] and statutes often disqualify owners of property in the benefit district.[80]

The officer making the initial determination of individual assessments must customarily certify the basis used to assess, that each parcel's benefit equals the amount of the special assessment thereon, must state a description of the lots and premises and oftentimes a valuation, and generally attest that the assessment was made in accord with statutory and charter provisions.[81] Where assessment rolls are required, failure to properly prepare them will be fatal to a special assessment.[82] Where properly prepared the officer's certificate is usually conclusive on how the assessment was made,[83] although not as to the extent of benefits.[84] Either the returned assessment roll or the council's own original determination of individual assessments must ordinarily be published or at the least, notice must be given that the assessment has been made and is on file at a city office.[85]

It is everywhere admitted that where there has been councilmanic delegation to subordinates or administrative boards there must be notice and an opportunity to be heard before an assessment becomes final.[86] It is sometimes suggested that the federal constitution will not be

[75] Warren v. City of Grand Haven, 30 Mich. 24 (1874); Auditor General v. Bishop, 161 Mich. 117, 125 N.W. 715 (1910).
[76] City of Naperville v. Wehrle, 340 Ill. 579, 173 N.E. 165 (1930); MILWAUKEE, WIS. CHARTER (1934) Sec. 11.29.
[77] Note, 71 A.L.R. 540.
[78] Hibben v. Smith, 191 U.S. 310, (1903); Federal Const. Co. v. Curd, 179 Cal. 489, 177 P. 469 (1918); State ex rel. Dorgan v. Fisk, 15 N.D. 219, 107 N.W. 191 (1906): Corliss v. Highland Park, 132 Mich. 152, 93 N.W. 254, 610, 95 N.W. 416 (1903). Notes, 2 A.L.R. 1207, 11 A.L.R. 193.
[79] Shreve v. Cicero, 129 Ill. 226, 21 N.E. 815 (1889); *Compare* Powers, 29 Mich. 504 (1874), *with* Brown v. Saginaw, 107 Mich. 643, 65 N.W. 601 (1895).
[80] Cumberland Valley R. Co. v. Martin, 100 Md. 165, 59 A. 714 (1905); Lickly v. Bishopp, 150 Mich. 256, 114 N.W. 69 (1907).
[81] BURNS IND. STAT. ANN. (1950), Sec. 48-2715, 48-2813, 48-3904; GEN. STAT. KANSAS (1935), Sec. 12-608.
[82] Weber v. Detroit, 158 Mich. 149, 122 N.W. 570 (1909); Adams v. Bay City, 78 Mich. 215, 44 N.W. 138 (1889).
[83] Walker v. Detroit, 138 Mich. 639, 101 N.W. 847 (1904).
[84] Auditor General v. O'Neill, 143 Mich. 343, 106 N.W. 895 (1906).
[85] BURNS IND. STAT. ANN. (1950), Sec. 48-2715, 48-2813, 48-3904; WYOMING COMP. STAT. ANN. (1945), 29-2020; W. VA. CODE (1943), Sec. 560; MINN. STAT. (1945), Sec. 412.29; PAGE'S OHIO GEN. CODE ANN., Sec. 3895.
[86] Embree v. Kansas City Rd. Dist., 240 U.S. 242 (1916); Security Trust Co. v. Lexington, 203 U.S. 323, 27 S.Ct. 87, 51 L. Ed. 204 (1906); Road Imp. Dist. v. Glover, 86 Ark. 231, 110 S.W. 1031 (1908); Stuart v. Palmer, 74 N.Y. 183 (1878); Browning v. Hooper, 269 U.S. 396, 46 S.Ct. 141, 70 L.Ed. 330 (1926).

violated by the failure to give notice and hearing when the council itself imposes the individual assessments.[87] It would be ill-advised, however, for any municipality to deny an affected property owner notice and hearing before imposing special assessments, and state constitutions and statutes, as well as local charters, regularly demand notice and hearing before the amount of the assessment becomes fixed.[88] Constructive notice is generally adequate to support special assesment proceedings.[89] After notice the council, board of review,[90] or court[91] will hold hearings on the amount of the individual assessments and there is always the power to correct mistakes and usually the power to refer the roll back to the assessors or to annul and order a new assessment. It has been held that a special assessment hearing did not satisfy the demands of due process of law when the property owner was not permitted to make arguments and support them with proof,[92] and another case held fatal a refusal to hear the property owner's counsel.[93] Customarily after proper hearing the governing body must by ordinance or resolution impose the assessments upon the benefitted property owners.[94]

[87] Withnell v. Ruecking Constr. Co., 249 U.S. 63, 39 S.Ct. 200, 63 L.Ed. 479 (1919); Hancock v. City of Muskogee, 250 U.S. 454, 39 S.Ct. 528, 63 L. Ed. 1081 (1919); Londoner v. Denver, 210 U.S. 373, 28 S.Ct. 708, 52 L.Ed. 1103 (1907); New York C. & H. Rr. v. Rochester, 114 N.Y.S. 779 (1909); *Notice and Hearing in Tax Assessments,* 33 ILL. L. REV. 575 (1939); Note, 37 MICH. L. REV. 1311 (1939).

[88] Wis. Laws (1935), Ch. 352; Armory Realty Co. v. Olsen, 210 Wis. 281, 246 N.W. 513 (1933); BURNS IND. STAT. ANN. (1950), Sec. 48-2701; W. VA. CODE 1943), Sec. 560; MINN. STAT. (1945), Sec. 412.29, 428.22; PAGE'S OHIO GEN. CODE ANN., Sec. 3842-3. Joyce v. Barron, 67 Ohio St. 264, 65 N.E. 1001 (1902); St. Louis v. Ranken, 96 Mo. 497, 9 S.W. 910 (1888); Rudolph v. City of Homewood, 245 Ala. 648, 18 S. (2d) 563 (1944); Cincinnati v. Sherike, 47 Ohio St. 217, 25 N.E. 169 (1890); Boden v. Town of Lake. 244 Wis. 215, 12 N.W. (2d) 140 (1944); Note, 28 L.R.A. (n.s.) 1201, (Generally notice need not be given mortgagees or other lien holders; Mortgage Co. of Md. v. Lory, 109 W. Va. 310, 154 S.E. 136 (1930), noted in 37 W. VA. L.Q. 110 (1930); Fitchpatrick v. Botheras, 150 Iowa 376, 130 N.W. 163 (1911).

[89] Paulsen v. Portland, 149 U.S. 30, 13 S.Ct. 750, 37 L. Ed. 637 (1893); Embree v. Kansas City Rd. Dist., 240 U.S. 242, 36 S.Ct. 317, 60 L. Ed. 624 (1916); Auditor General v. Calkins, 136 Mich. 1, 98 N.W. 742 (1904); Cincinnati v. Shaffer, 46 Ohio App. 73, 187 N.E. 747 (1933); Wimberly v. Cowan Inv. Corp., 80 F. (2d) 452 (5th Cir., 1935), cert. dnd., 298 U.S. 654, 56 S.Ct. 674, 80 L. Ed. 1381 (1935); Wiget v. City of St. Louis, 337 Mo. 799, 85 S.W. (2d) 1038 (1935).

[90] MINN. STAT. (1945), Sec. 428.22, 430.02; N. MEX. STAT. ANN. (1941), Sec. 14-3330; BURNS IND. STAT. ANN. (1950), Sec. 48-2715; WYOMING COMP. STAT. ANN. (1945), Sec. 29-2020; W. VA. CODE (1943), 560; Auditor General v. Hoffman, 132 Mich. 198, 93 N.W. 259 (1903); City of Sault Ste. Marie v. Minneapolis Rr., 192 Mich. 65, 158 N.W. 164 (1916); MILWAUKEE, WIS., CHARTER (1934) (Initial Review by Commr. Public Works).

[91] JONES ILLINOIS STAT. ANN., Sec. 21.2257; VA. CODE (1950), Sec. 15-675, 15-676; BURNS IND. STAT. ANN. (1950), 48-2701.

[92] Londoner v. Denver, 210 U.S. 373, 28 S.Ct. 708, 52 L. Ed. 1103 (1907).

[93] People v. Nokomis Coal Co., 308 Ill. 45, 139 N.E. 41 (1923). See generally, *Notice and Hearing in Tax Assessments,* 33 ILL. L. REV. 575 (1939).

[94] Shaffer v. Haddam City, 130 Kan. 450, 286 P. 218 (1930); Weld v. People ex. rel. Kern, 149 Ill. 257, 36 N.E. 1006 (1894); City of Des Plaines v. Boeckenhauer, 383 Ill. 475, 50 N.E. (2d) 483 (1943); Ploch v. City of Clifton, 126 N.J.L. 199, 18 A. (2d) 546 (1941); Uvalde Rock Asphalt Co. v. Lacy, 131 S.W. (2d) 698 (Tex. Civ. App. 1939); City of Chicago v. Jerome, 301 Ill.

Although statutes frequently state that confirmed assessment rolls are final and conclusive,[95] they are customarily interpreted so as to permit proof of fraud and absence of benefits.[96] Courts are agreed, however, that in the absence of fraud or mistake the determination of the municipal authorities that benefits equal the amount of the assessment is conclusive.[97]

Where assessment proceedings were invalid it has been held that the contractor could not recover even on the theory of implied contract.[98] Today statutes regularly permit municipalities to make reassessments in the same manner as provided for original assessments in the event that the original was defective,[99] and these are uniformly upheld.[100] Curative acts of the legislature are also possible.[101]

Statutes customarily permit municipalities at some stage of the assessment proceedings to issue assesment bonds, warrants or certificates of liability to pay for the improvement while the special assessments are being collected. Usually it is provided that the recital therein that the certificates were issued in compliance with all laws will be conclusive evidence of the facts so recited.[102] And other statutes provide that "no error of informality in any action taken by any city in ordering or making any such improvement or the levy or making of any assessment . . . shall in any manner affect the validity of any such assessment bonds or certificates."[103]

Property Subject to Assessment

Before there can be a valid municipal assessment against a piece of property, the city must have jurisdiction of the property to be assessed. Accordingly, in absence of specific statutory authority, a city has no power to include in an assessment district lands without the corporate

587, 134 N.E. 92 (1922); Scovil v. City of Ypsilanti, 207 Mich. 288, 174 N.W. 139 (1919).

[95] Michigan Stat. Ann., Sec. 5.1839.

[96] Erischkorn Inv. Co. v. Detroit, 257 Mich. 546, 241 N.W. 903 (1932).

[97] Davies v. City of Saginaw, 87 Mich. 439, 49 N.W. 667 (1891).

[98] Labadie v. Perry, 170 Mich. 344, 136 N.W. 351 (1912).

[99] Minn. Stat. (1945), Sec. 428.33; Page's Ohio Gen. Code Ann., Sec. 3902; Gen. Stat. Kansas (1935), Sec. 14-409; Michigan Stat. Ann., Sec. 5.1846; Wyoming Comp. Stat. Ann. (1945), Sec. 29-2042; (The wording of the statute is important on whether "jurisdictional" defects can be cured by reassessment). *Compare* Thayer Lumber v. Muskegon, 157 Mich. 424, 122 N.W. 189 (1909), *with* Crawford v. Detroit, 169 Mich. 293, 135 N.W. 314 (1912); Note, 83 A.L.R. 1190.

[100] Henning v. Casper, 50 Wyo. 1, 57 P. (2d) 1264, 62 P. (2d) 304 (1936); Gray v. Dingman, 279 Mich. 62, 271 N.W. 552, 110 A.L.R. 274 (1937); Kansas City v. Silver, 74 Kan. 851, 85 P. 805 (1906); Chester City v. Black, 132 Pa. 568, 19 A. 276 (1890); City of Seattle v. Kelleher, 195 U.S. 351, 25 S.Ct. 44, 49 L.Ed. 232 (1904); Weber v. City of Detroit, 158 Mich. 149, 122 N.W. 570 (1909).

[101] *Curative Tax Legislation*, 32 Ill. L. Rev. 456 (1938).

[102] New Mex. Stat. Ann. (1941) 14-3321.

[103] Minn. Stat. (1945), Sec. 428.61. See also Burns Ind. Stat. Ann., Sec. 48-2711 (1950), and see short Statute of Limitation in Milwaukee, Wis., Charter (1934), Sec. 9.84.

limits.[104] And, where the district has been created or exact rules for its delineation set forth by the legislature or in the municipal charter, there can be no assessment of property outside such confines.[105] Similarly, where a council has created an assessment district assessors can not put on the assessment rolls property outside such area.[106]

Sometimes state statutes specify the properties subject to special assessments for particular public improvements[107] and they, of course, control. More frequently, however, the exemptions are set forth in state statutes or municipal charters. Regularly exempt from special assessments by municipalities, even in the absence of statutes, are properties owned by the United States Government,[108] as well as those owned by the state in which the municipality is situated.[109] County property is ordinarily exempt unless the contra legislative intent is clear.[110] However, by the weight of authority, municipal property is subject to special assessments.[111] Where public property is subject to special assessment the property can seldom be seized and sold for nonpayment of the assessment, but judgments can frequently be had against the governmental unit assessed,[112] and often mandamus will lie to force the public officer to pay the assessment.[113]

[104] City of Des Plaines v. Boeckenhauer, 383 Ill. 475, 50 N.E. (2d) 483 (1943); City of Lawrenceville v. Hennessey, 244 Ill. 464, 91 N.E. 670 (1910); Newman v. Sylvester, 42 Ind. 106 (1873).

[105] Buckingham v. Kerr, 68 Ind. App. 290, 120 N.E. 422 (1918); City of Scottsbluff v. Acton, 135 Neb. 636, 283 N.W. 374 (1939); Hurd v. Sanitary Sewer District, 109 Neb. 384, 191 N.W. 438 (1922); cf. Detroit Lumber Co. v. Arbitter, 252 Mich. 99, 233 N.W. 179 (1930), noted in 20 NAT. MUN. REV. 102 (1931).

[106] Grand Haven Basket Factory v. Grand Haven, 174 Mich. 279, 140 N.W. 609 (1913); Van Zanten v. City of Grand Haven, 174 Mich. 282, 140 N.W. 471 (1913).

[107] W. VA. CODE (1943), Sec. 569; WIS. STATS. (1933), Sec. 75.65.

[108] Mullen Benevolent Corp. v. United States, 290 U.S. 89, 54 S.Ct. 38, 78 L. Ed. 192 (1933); United States v. City of Charleston, 93 F. Supp. 748 (D.C.W.Va. 1950); Fagan v. Chicago, 84 Ill. 227 (1876). (Exemptions are regularly held constitutional). Lamasco Realty Co. v. City of Milwaukee, 242 Wis. 357, 8 N.W. (2d) 372 (1943).

[109] State v. Olympia, 171 Wash. 594, 18 P. (2d) 848 (1933); People ex rel. Auditor General v. Ingalls, 238 Mich. 423, 213 N.W. 713 (1927); Municipal Investors Assn. v. City of Birmingham, 298 Mich. 314, 299 N.W. 90 (1941). Wis. Laws 1901, Ch. 250; MILWAUKEE, WIS., CHARTER (1934) Sec. 11.52.

[110] Mt. Sterling v. Montgomery County, 152 Ky. 537, 153 S.W. 952 (1913); City of Big Rapids v. Mecosta County, 99 Mich. 351, 58 N.W. 358 (1894); City of McCook v. Red Willow County, 133 Neb. 380, 275 N.W. 396 (1937); Cf. Jefferson County v. Oskaloosa, 80 Kan. 587, 102 P. 1095 (1909), and Bd. of County Commrs. v. Shrader, 36 Ind. 87 (1871) upholding assessments.

[111] Phoenix v. Wilson, 39 Ariz. 250, 5P. (2d) 411 (1932); Long v. Monroe, 265 Mich. 525, 251 N.W. 582 (1933); Re Commercial St., 134 Misc. 120, 234 N.Y.S. 694 (1929); Newberry v. Detroit, 164 Mich. 410, 129 N.W. 699 (1911); Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N.E. 20 (1908).

[112] Lowe v. Bd. of County Commrs., 94 Ind. 553 (1883); Witchita v. Board of Education, 92 Kan. 967, 142 P. 946 (1914); Raisch v. New York, 235 App. Div. 706, 255 N.Y.S. 589 (1932); Franklin County v. Ottawa, 49 Kan. 747, 31 P. 788 (1892); Jefferson County v. Oskaloosa, 80 Kan. 587, 102 P. 1095 (1909); Jackson v. Board of Education, 115 Ohio St. 368, 154 N.E. 247 (1927); City of St. John v. Stafford County, 111 Kan. 128, 205 P. 1033 (1922). Contra: Clinton v. Henry County, 115 Mo. 557, 22 S.W. 494 (1893).

[113] Raleigh v. Raleigh City Adm. Unit, 223 N.C. 316, 26 S.E. (2d) 591 (1943); Philadelphia v. School District, 40 Pa. D. & C. R. 462 (1940).

Constitutional exemptions from taxation do not ordinarily include special assessments[114] and hence, in the absence of statute to the contrary, cemetery,[115] homestead[116] and agricultural[117] lands, church,[118] private school,[119] and charitable organization[120] properties are subject to special assessments. Courts are not at all inclined to expand constitutional or statutory exemptions from special assessments.[121] Notwithstanding some early doubts, railroad properties can be subject to local assessments, even for the paving of roads, on the same proof applicable to other properties, namely benefit.[122] Although the cases are not in agreement there is the possibility that statutes and charters relieving particular properties subject to assessment for improvements from such burdens may be unconstitutional.[123] There is also a conflict of authority as to the validity of conditions in a dedication of land to municipalities that remaining land owned by the donor shall not be subject to special

---

[114] Logan v. City of Louisville, 283 Ky. 518, 142 S.W. (2d) 161 (1940); Jefferson County v. City of Birmingham, 235 Ala. 199, 178 S. 226 (1938); People ex rel. Auditor General v. Ingalls, 238 Mich. 423, 213 N.W. 713, (1927); City of St. John v. Stafford County, 111 Kan. 128, 205 P. 1033 (1922).

[115] Baltimore v. Green Mt. Cemetery, 7 Md. 517 (1855); Garden Cemetery Corp. v. Baker, 218 Mass. 339, 105 N.E. 1070 (1914); Buffalo City Cemetery v. Buffalo, 46 N.Y. 506 (1871); Rock Island v. Chippiannock Cemetery Assn., 328 Ill. 236, 159 N.E. 271 (1927). Note, 71 A.L.R. 322. However, some cases hold that where the land is perpetually set aside for cemetery purposes it is exempt from special assessments. Woodmere Cemetery Assn. v. Detroit, 192 Mich. 553, 159 N.W. 383 (1916); Mt. Auburn Cemetery v. Cambridge, 150 Mass. 12, 22 N.E. 66 (1889). Subject to assessment under Wis. Laws (1897), Ch. 93.

[116] Reed v. Athens, 146 Tenn. 168, 240 S.W. 439 (1921); Todd v. Atchison, 9 Kan. App. 251, 59 P. 676 (1900); City of Wichita Falls v. Williams, 119 Tex. 163, 26 S.W. (2d) 910 (1930) noted in 9 TEX. L. REV. 105 (1930). Note, 79 A.L.R. 712.

[117] Allen v. Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

[118] Lefevre v. Detroit, 2 Mich. 587 (1853); Atlanta v. First Presbyterian Church, 86 Ga. 730, 13 S.E. 252 (1890); Rensberg v. Parker, 192 Ark. 908, 95 S.W. (2d) 892 (1936); Rausch v. Trustees, 107 Ind. 1, 8 N.E. 25 (1886); Contra: Erie v. Universalist Church, 105 Pa. 278, (1884); First Presbyterian Church v. Fort Wayne, 36 Ind. 338, 10 Am. Rep. 35 (1871).

[119] Williams College v. Williamstown, 219 Mass. 46, 106 N.E. 687 (1914); Board of Education v. Town of Greenburgh, 277 N.Y. 193. 13 N.E. (2d) 768 (1938); and cf. City Street Improvement v. University of California, 153 Cal. 776, 96 P. 801 (1908).

[120] Roosevelt Hospital v .New York, 84 N.Y. 108 (1881); Fuller's Petition, 226 Mich. 170, 197 N.W. 552 (1924). Notes, 34 A.L.R. 687, 62 A.L.R. 339, 108 A.L.R. 301.

[121] Des Moines City Ry. v. City of Des Moines, 159 N.W. 450 (Iowa, 1916); Auditor General v. MacKinnon Boiler and Mach. Co., 199 Mich. 489, 165 N.W. 771 (1917).

[122] Georgia R. & Bkg. Co. v. Decatur, 137 Ga. 537, 73 S.E. 830 (1912); Kansas City Southern v. Road Imp. Dist. 266 U.S. 379, 45 S.Ct. 136, 69 L. Ed. 335 (1924); Union Pacific v. Jefferson County, 114 Kan. 156, 217 P. 315 (1923); Indianapolis Rr. Co. v. Ross, 47 Ind. 25 (1874); City of Grand Rapids v. Grand Trunk Ry. System, 214 Mich. 1, 182 N.W. 424 (1921). Compare Kansas City Southern v. May 2 F. (2d) 680 (8th Cir., 1924); City of San Diego v. A.T.S.F., 45 F. (2d) 11 (9th Cir., 1930), noted in 79 U. PA. L. REV. 816 (1931). Notes, 48 A.L.R. 497, 37 A.L.R. 219, 82 A.L.R. 425.

[123] Oregon Rr. v. Berg, 52 Idaho 499, 16 P. (2d) 373 (1932). Note 105 A.L.R. 1169.

assessments.[124] In general, contracts exempting certain properties from special assessments are properly deemed contra to public policy.[125]

What Can Be Included in the Cost of an Improvement to Be Assessed

Occasionally statutes specifically enumerate the items that may be included in the cost of improvements to be assessed.[126] Generally the total amount assessed may include the cost of making estimates and plans, the charges of engineers and attorneys, surveying, printing, advertising for bids, preparation of assessment rolls, and general expenses of determining and levying the special assessments.[127] Sometimes, too, the amount may include the contractor's charge for promising to maintain the improvement in repair for a period of time.[128] And statutes sometimes authorize the inclusion of extra work not anticipated at the time of hearings on the contemplated improvement.[129] However, where an assessment includes costs of unauthorized work it will be set aside.[130] Note should be made of the frequent statutes limiting the percentages of cost of the improvement that can be spread over the benefit district.[131]

Amount of Individual Assessments

Often the amount of individual assessment is limited by law to a certain percent of the value of the property.[132] These limitations may be waived.[133] Although the United States Supreme Court is currently

[124] Permitting: Giles v. City of Olympia, 115 Wash. 428, 197 P. 631 (1921); Perth Amboy Trust Co. v. Perth Amboy, 75 N.J.L. 291, 68 A. 84 (1907); Scovel v. Detroit, 159 Mich. 95, 123 N.W. 569 (1909).
Denying: Richards v. Cincinnati, 31 Ohio St. 506 (1877); Vrana v. St. Louis, 164 Mo. 146, 64 S.W. 180 (1901); Leggett v. Detroit, 137 Mich. 247, 100 N.W. 566 (1904).

[125] Pittsburgh Co. v. Oglesby, 165 Ind. 542, 76 N.E. 165 (1905); Cleveland v. Edwards, 109 Ohio St. 598, 143 N.E. 181, 37 A.L.R. 1352 (1924).

[126] Burns Ind. S.A. (1950), Sec. 48-2702; Wyoming Comp. S.A. (1945), Sec. 29-2016; W. Va. Code (1943), Sec. 570; Page's Ohio Gen. Code Ann., Sec. 3896.

[127] Mann v. Downers Grove San. Dist., 281 Ill. App. 412 (1936); Roberts v. City of Los Angeles, 7 Cal. (2d) 477, 61 P. (2d) 323 (1936); Chamberlain v. Cleveland, 34 Ohio St. 551 (1878); Cuming v. Grand Rapids, 46 Mich. 150 (1881); County Securities v. Palmer, 3 N.Y.S. (2d) 382 (1938); Massengill v. Clovis, 33 N. Mex. 519, 270 P. 886 (1928); Scanlan v. Continental Inv. Co., 142 S.W. (2d) 432 (Tex. Civ. App., 1940).

[128] Newberry v. Detroit, 184 Mich. 188, 150 N.W. 838 (1915). And see footnotes 21 and 22, *supra.*

[129] Wyoming Comp. S.A. (1945), Sec. 29-2061.

[130] Peck v. City of Grand Rapids, 125 Mich. 416, 84 N.W. 614 (1900).

[131] Burns Ind. Stat. Ann. (1950), Sec. 48-2701; Gen. Stat. Kansas (1935, supp. 1947), Sec. 13-1378; Code of Virginia (1950), Sec. 15-671; Page's Ohio Gen. Code Ann., Sec. 3820.

[132] Page's Ohio Gen. Code Ann., Sec. 3819; Mich. S.A., Sec. 5.1829; City of Morehead v. Nickell, 278 Ky. 318, 128 S.W. (2d) 722 (1939); People ex rel. Montgomery v. Maynard, 352 Ill. 283, 185 N.E. 620 (1933); Harris v. Village of Highland Park, 183 Mich. 573, 150 N.W. 108 (1914). Milwaukee, Wis., Charter (1934), Sec. 11.37.

[133] De Armond v. Hamilton, 27 Ohio App. 258, 161 N.E. 29 (1927).

willing to analogize special assessments to taxes and condemn them only if unreasonably arbitrary,[134] the dominant state court rule requires that the amount of the assessment be not in substantial excess of the amount of the special benefit to the property improved.[135] In determining the extent of special benefits, municipalities are not limited to present uses but can consider both customary and available uses.[136] The benefits, nevertheless, must be actual or probable and not mere possibilities in the remote future.[137]

A special assessment must be spread over the benefit district according to some fair and uniformly applied rule and in such a way as to show a compliance with the rule.[138] From time to time courts deny the validity of various methods when automatically applied regardless of benefits,[139] but an abundance of judicial decisions sustains the applicability of the front-foot rule to sidewalks, street improvements and other public works.[140] Many cases, too, attest the propriety of assessing the cost of certain improvements, such as sewers, according to the square foot or area basis.[141] Corner lots are usually chargeable with improvements on both sides,[142] and the increased value to non-contiguous properties because of corner influence can be considered in

---

[134] French v. Barber Asphalt Co., 181 U.S. 324, 21 S.Ct. 625, 45 L. Ed. 879 (1900).

[135] Boden v. Town of Lake, 244 Wis. 215, 12 N.W. (2d) 140 (1944); Nakina Realty Co. v. City of Milwaukee, 249 Wis. 355, 24 N.W. (2d) 610 (1947); Driscoll v. Inhabitants of Northbridge, 210 Mass. 151, 96 N.E. 59 (1911); Stevens v. City of Port Huron, 149 Mich. 536, 113 N.W. 291 (1907) noted in 21 HARV. L. REV. 533 (1908); Stockman v. City of Trenton, 132 Fla. 406, 181 S. 383 (1938). Note, 28 L.R.A. (n.s.) 1172. Under this rule statutory attempts to impose fixed percentages of costs upon owners are in peril. Detroit v. Judge of Recorders Court, 112 Mich. 588, 71 N.W. 149, 42 L.R.A. 638 (1897).

[136] Sterling N. Bk. & Trust Co. v. Charleston Transit Co., 126 W.Va. 42, 27 S.E. (2d) 256 (1943) cert. dnd. 321 U.S. 777, 64 S.Ct. 618, 88 L. Ed. 1070 (1943). I. H. Gingrich & Sons v. City of Grand Rapids, 256 Mich. 661, 239 N.W. 876 (1932).

[137] Dix-Ferndale Taxpayers Assn. v. Detroit, 258 Mich. 390, 242 N.W. 732 (1932); Hatch v. M.C.Rr., 238 Mich. 381, 212 N.W. 950 (1927).

[138] In re Realty Inv. & Sec. Corp., 185 Minn. 170, 240 N.W. 355 (1932) noted in 18 VA. L. REV. 800 (1932); Panfil v. Detroit, 246 Mich. 149, 224 N.W. 616 (1929).

[139] Welch v. City of Oconomowoc, 197 Wis. 173, 221 N.W. 750 (1928); Gast Realty & Inv. Co. v. Schneider Granit Co., 240 U.S. 55, 36 S.Ct. 254, 60 L. Ed. 523 (1916); Johnson v. Rudolph, 16 F. (2d) 525 (D.C. Cir., 1926), noted in 15 GEO. L. J. 355 (1927); Lawrence v. Grand Rapids, 166 Mich. 134, 131 N.W. 581, (1911); Auditor General v. Bishop, 161 Mich. 117, 125 N.W. 715 (1910).

[140] Peterson v. City of Phillips, 189 Wis. 246, 207 N.W. 268 (1926); McKee v. Pendleton, 162 Ind. 667, 69 N.E. 997 (1904); Shoemaker v. Cincinnati, 68 Ohio St. 603, 68 N.E. 1 (1903); Ellis v. New Mexico Construction Co., 27 N. Mex. 312, 201 P. 487 (1921); City of Roswell v. Bateman, 20 N.Mex. 77, 146 P. 950 (1915); Allen v. Davenport, 107 Iowa 90, 77 N.W. 532 (1898). Note, 56 A.L.R. 941.

[141] State ex rel, Johnson v. City of Dayton, 200 Wash. 91, 93 P. (2d) 909 (1939); Auditor General v. Bishop, 161 Mich. 117, 125 N.W. 715 (1910); Walker v. Detroit, 138 Mich. 639, 101 N.W. 847 (1904).

[142] City of Louisville v. Colby, 262 Ky. 578, 90 S.W. (2d) 1036 (1936).

levying special assessments.[143] In general, any municipal rule of apportionment of burden which is a reasonable method for the given type of public improvement is constitutional and the court will ordinarily not invalidate a method of assessment because it occasionally leads to the assessment of a particular lot for a sum larger than the exact benefit to that parcel.[144]

Statutes often provide that the municipal determination of the amount of benefits is final and conclusive[145] and the judiciary will ordinarily not substitute its judgment for that of municipal officers as to the amount of benefit,[146] but when the amount is arbitrary or fraudulent courts have been willing to enjoin the enforcement and collection of individual assessments.[147] The city council is presumed to have acted in good faith and correctly exercised its discretion in apportioning benefits and there is everywhere a presumption that the benefits were properly allocated.[148]

Appeal and Relief From Special Assessments

It is customary for local statutes and charters to specify the nature of the protest and relief from municipal assessments,[149] and the failure to avail oneself of these means will almost always preclude attack upon the assessment elsewhere,[150] although there is authority denying

---

[143] Lambrecht v. Detroit, 264 Mich. 577, 250 N.W. 315 (1933).

[144] Louisville and Nashville Rr. v. Barber Asphalt Pavg. Co., 197 U.S. 430, 25 S.Ct. 466, 49 L. Ed. 819 (1905).

[145] Burns Ind. S.A. (1950) Sec. 48-2701; Wyoming Comp. S.A. (1945) Sec. 29-2023.

[146] Damron v. City of Huntington, 82 W. Va. 401, 96 S.E. 53 (1918); McKee v. City of Grand Rapids, 203 Mich. 527, 170 N.W. 100 (1918); Frischkorn Inv. Co. v. Detroit, 257 Mich. 546, 241 N.W. 903 (1932); Lambrecht v. Detroit, 264 Mich. 577, 250 N.W. 315 (1933).

[147] Driscoll v. Inhabitants of Northbridge, 210 Mass. 151, 96 N.E. 59 (1911); Norwood v. Baker, 172 U.S. 269, 19 S.Ct. 187, 43 L. Ed. 443 (1898); Kansas City Southern Ry. v. Road Imp. Dist., 256 U.S. 658, 41 S.Ct. 604, 65 L. Ed. 1151 (1921); Hatch v. M.C.R.R., 238 Mich. 381, 212 N.W. 950 (1927); McKee v. City of Grand Rapids, 203 Mich. 527, 170 N.W. 100 (1918). Note, 56 A.L.R. 941.

[148] Curb and Gutter District No. 37 v. Parish, 110 F. (2d) 902 (8th Cir., 1940); City of Louisa v. Horton, 263 Ky. 739, 93 S.W. (2d) 620 (1936); Auditor General v. Maier, 95 Mich. 127, 54 N.W. 640 (1893); City of Higginsville v. Alton Rr., 237 Mo. App. 1204, 171 S.W. (2d) 795 (1943); City of Scottsbluff v. Kennedy, 141 Neb. 728, 4 N.W. (2d) 878 (1942); Town of Asheboro v. Miller, 220 N.C. 298, 17 S.E. (2d) 105 (1941); Holmes v. Bowen, 60 Ohio App. 168, 19 N.E. (2d) 974 (1939); Broussard v. Oldham, 142 S.W. (2d) 837 (Tex. Civ. App., 1940); State ex rel. City of Huntington v. Heffley, 127 W. Va. 254, 32 S.E. (2d) 456 (1945); Graham v. City of Saginaw, 317 Mich. 427, 27 N.W. (2d) 42 (1947); Cleveland v. City of Spartanburg, 185 S.C. 373, 194 S.E. 128 (1938).

[149] Wyoming Comp. S.A. (1945) Sec. 29-2007; Minn. Stat. (1945) ss. 412.30, 430.03; New Mex. S.A. (1941) Sec. 14-3332; Milwaukee, Wis., Charter (1934), Sec. 11.22; Wis. Laws (1945), ch. 352 (Appeal to Circuit Ct. exclusive remedy).

[150] Lamasco Realty v. City of Milwaukee, 242 Wis. 357, 8 N.W. (2d) 372 (1943); Forester v. Coombs Land Co., 277 Ky. 279, 126 S.W. (2d) 433 (1939); Wimberly v. Cowan Inv. Corp., 80 F. (2d) 452 (5th Cir., 1936), cert. dnd.

estoppel when the defect in the proceedings is jurisdictional.[151] In accord with the general rule, failing to present an objection at the hearing prevents raising it later,[152] and failure to object to the municipal authorities in proper form will bar attack in other form.[153] Parties appearing at the hearing and objecting are customarily deemed to have waived any irregularities in notice and service.[154] So, too, objecting on one ground waives other objections.[155] And failure to appeal as provided by statute or charter will estop a property owner from other attack.[156] Similarly, failure to appeal within the relatively short time periods provided by statute will bar later attack.[157] The general rule requiring exhaustion of administrative appeals before seeking judicial relief finds abundant illustration in the field of municipal assessments.[158]

One who petitions for a public improvement should be estopped to deny the necessity for the improvement,[159] and to deny that the total

298 U.S. 654, 56 S.Ct. 674, 80 L. Ed. 1381 (1935). Brown v. Grand Rapids, 83 Mich. 101, 47 N.W. 117 (1890); Jasper Land Co. v. Jasper, 220 Ala. 639, 127 S. 210 (1930); Ahlman v. Barber Asphalt Pav. Co., 40 Cal. App. 395, 181 P. 238 (1890); Morton v .Cincinnati, 61 Oh. App. 329, 22 N.E. (2d) 581 (1939). Note, 100 A.L.R. 1292. Unless the complainant property owner had no valid notice of the assessment proceedings. Boden v. Town of Lake, 244 Wis. 215, 12 N.W. (2d) 140 (1944).

[151] Robertson v. Grand Forks, 27 N.D. 556, 147 N.W. 249 (1914); Van Zanten v. Grand Haven, 174 Mich. 282, 140 N.W. 471 (1913); Gwilliam v. Ogden City, 49 Utah 555, 164 P. 1022 (1917); Mills v. Detroit, 95 Mich. 422, 54 N.W. 897 (1893).

[152] James Conroy Family Co. v. City of Milwaukee, 246 Wis. 258, 16 N.W. (2d) 814 (1945); Hoffeld v. Buffalo, 130 N.Y. 387, 29 N.E. 747 (1892); Lytle v. Sioux City, 198 Iowa 848, 200 N.W. 416 (1924); Varble v. O'Neil, 110 Ind. App. 164, 37 N.E. (2d) 276 (1941); Simpson v. San Francisco, 174 Cal. 815, 162 P. 631 (1917); Duffy v. Saginaw, 106 Mich. 335, 64 N.W. 581 (1895); Wahlgren v. Kansas City, 42 Kan. 243, 21 P. 1068 (1889).

[153] Domito v. Village of Maumee, 140 Ohio St. 229, 42 N.E. (2d) 984 (1942).

[154] Sunset Golf Club v. Sioux City, 46 N.W. (2d) 548 (Iowa, 1951); Gregory v. City of Ann Arbor, 127 Mich. 454, 86 N.W. 1013 (1901); City of Sandusky v. Roberts, 226 Mich. 63, 196 N.W. 974 (1924).

[155] Brown v. Otis, 98 App. Div. 554, 90 N.Y.S. 250 (1904); Lovington v. Gregory, 287 Ill. 169, 122 N.E. 504 (1919); Stewart v. Detroit, 137 Mich. 381, 100 N.W. 613 (1904); Roberts v. City of Los Angeles, 7 Cal. (2d) 477, 61 P. (2d) 323 (1936); Peoples Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464, 79 A.L.R. 1310 (1932).

[156] Colby v. Medford, 85 Ore. 485, 167 P. 487 (1917); Lytle v. Sioux City, 198 Iowa 848, 200 N.W. 416 (1924); State ex rel Johnson v. City of Dayton, 200 Wash. 91, 93 P. (2d) 909 (1939); Gates v. Grand Rapids, 134 Mich. 96, 95 N.W. 998 (1903).

[157] Armory Realty co. v. Olsen, 210 Wis. 281, 246 N.W. 513 (1933); Mason v. Kansas City, 103 Kan. 275, 173 P. 535 (1918); Cook v. Allendale, 79 N.J.L. 285, 75 A. 769 (1910); Utley v. City of St. Petersburg, 292 U.S. 106, 54 S.Ct. 593, 78 L. Ed. 1155 (1934); Auditor General v. Tillson, 258 Mich. 211, 241 N.W. 899 (1932); City of Enid v. Robinson, 93 F. Supp. 923 (D.Okl., 1941); Smythe v. City of Homewood, 236 Ala. 159, 181 S. 491 (1938); Laflin v. Bd. Commrs., 205 Ark. 24, 166 S.W. (2d) 653 (1943); Aikens v. City of Rockledge, 132 Fla. 874, 182 S. 235 (1938); Buckwalter v. Duncan, 126 Kan. 179, 267 P. 962 (1928).

[158] Wiget v. City of St. Louis, 337 Mo. 799, 85 S.W. (2d) 1038 (1935); Utley v. City of St. Petersburg, 292 U.S. 106, 54 S.Ct. 593, 78 L. Ed. 1155 (1934); Owens v. Marion, 127 Iowa 469, 103 N.W. 381 (1905); City of Cincinnati v. Board of Education, 63 Oh. App. 549, 27 N.E. (2d) 413 (1940).

[159] Note, 9 A.L.R. 634.

cost exceeds benefit,[160] but not the constitutionality of the act under which the work was undertaken,[161] the adequacy of the petition[162] or other steps in the assessment proceeding,[163] except irregularities in notice of hearing on the contemplated improvement,[164] nor should a petitioner be estopped to attack the amount of his own assessment.[165] A property owner may waive his right to contest an assessment by an express agreement such as a stipulation usually contained in agreements for delayed payments of the assessment.[166] Here again, this is sometimes held not to constitute an estoppel to object to jurisdictional defects.[167] A property owner who knows, or should know, work is being done on a public improvement to his benefit and that an assessment therefor is likely, and who fails to object thereto will ordinarily be estopped to attack the improvement or assessment.[168] As elsewhere, when the defect is jurisdictional estoppel will probably not be applied.[169] Laches generally will bar attack upon special assessments[170] and so, too,

[160] Gamma Alpha Bldg. Assn. v. Eugene, 94 Ore. 80, 184 P. 973 (1919); Motz v. Detroit, 18 Mich. 495 (1869).

[161] Auditor General v. Johns, 190 Mich. 601, 157 N.W. 76 (1916). Contra: Shepard v. Barron, 194 U.S. 553, 24 S.Ct. 737, 48 L. Ed. 1115 (1903); Conde v. Schenectady, 164 N.Y. 258, 58 N..E. 130 (1900).

[162] Re Sharp, 56 N.Y. 257, 15 Am. Rep. 415 (1874); Auditor General v. Woodard, 191 Mich. 496, 158 N.W. 179 (1916).

[163] Baltimore v. Porter, 18 Md. 284, 79 Am. Dec. 686 (1862); Wakely v. Omaha, 58 Neb. 245, 78 N.W. 511 (1899); Steckert v. City of East Saginaw, 22 Mich. Mich. 104 (1870). Contra: Seattle v. Hill, 23 Wash. 92, 62 P. 446 (1900); Hendrickson v. Toledo, 23 Ohio C.C. 256 (1901).

[164] Vinewood Realty Co. v. Village of Willowick, 70 Ohio App. 74, 45 N.E. (2d) 148 (1942).

[165] Spokane v. Fonnell, 75 Wash. 417, 135 P. 211 (1913); McGlynn v. Toledo, 12 Ohio C.D. 15, 22 Ohio C.C. 34 (1901); I.H. Gingrich & Sons v. City of Grand Rapids, 256 Mich. 661, 239 N.W. 876 (1932).

[166] Dunkirk Land Co. v. Zehner, 35 Ind. App. 694, 74 N.E. 1099 (1905); Floyd v. Atlanta Bkg. Co., 109 Ga. 778, 35 S.E. 172 (1899); Metropolitan Bldg. Co. v. Seattle, 92 Wash. 660, 159 P. 793 (1916); Twp. of Grosse Ile v. New York Indemnity Co., 260 Mich. 643, 245 N.W. 91 (1932); Ingram's Est. v. Gilmore, 110 Ind. App. 298, 38 N.E. (2d) 860 (1942); Campbell Constr. Co. v. Williamson, 263 Ky. 336, 92 S.W. (2d) 332 (1936); Dunn v. Superior, 148 Wis. 636, 135 N.W. 145 (1912). MILWAUKEE, WIS., CHARTER (1934), Sec. 11.36.

[167] Harnwell v. White, 115 Ark. 88, 171 S.W. 108 (1914); Cushing v. Allen (Mo. App. 1911), 133 S.W. 1197 (1911).

[168] Schmidt et al. v. Village of Deer Park, 81 Ohio App. 417, 78 N.E. (2d) 72 (1947); Forester v. Coombs Land Co., 277 Ky. 279, 126 S.W. (2d) 433 (1939); Indianapolis v. Dillon, 212 Ind. 172, N N.E. (2d) 966 (1937); Tone v. Columbia, 39 Ohio St. 281, 48 Am. Rep. 438 (1883); Auditor General v. Hoffman, 132 Mich. 198, 93 N.W. 259 (1903); Nowlan v. City of Benton Harbor, 134 Mich. 401, 96 N.W. 450 (1903).

[169] Cullingham v. City of Omaha, 143 Neb. 744, 10 N.W. (2d) 615 (1943); In re St. John's Cemetery, Woodhaven Blvd., 260 App. Div. 659, 23 N.Y.S. (2d) 561, (1940); Auditor General v. Johns, 190 Mich. 601, 157 N.W. 76 (1916). And see generally on the applicability of estoppel to "jurisdictional" defects: Forest Hill Cemetry Co. v. City of Ann Arbor, 303 Mich. 56, 5 N.W. (2d) 564 (1942); Penrose v. Whitacre, 61 Nev. 440, 132 P. (2d) 609 (1943); City of McCook v. Red Willow County, 133 Neb. 380, 275 N.W. 396 (1937).

[170] Blake v. City of Spartanburg, 185 S.Ct. 398, 194 S.E. 124 (1938); State ex rel. Johnson v. City of Dayton, 200 Wash. 91, 93 P. (2d) 909 (1939); Howe v. City of Florence, 121 Kan. 202, 246 P. 510 (1926); Kinney v. Mayor of City of Milledgeville, 185 Ga. 866, 196 S.E. 467 (1938); Reliance Automobile and Supply Co. v. City of Jackson, 244 Mich. 232, 221 N.W. 290 (1928).

payment of some installments without protest will often prevent later objection.[171]

If a public improvement financed by a special assessment has been wholly or partially abandoned the clear weight of authority permits recovery of the assessments paid,[172] unless the particular property has been benefited by the partial completion.[173] Where an assessment is void, statutes generally permit recovery of assessments paid so long as payment was involuntary.[174] Absent a statute, however, recovery may be difficult.[175] Courts of equity will often in the event of invalid assessments grant injunctions restraining the municipal authorities from advertising for bids, letting contracts, going forward with the assessment proceedings, and collecting assessments.[176] So, too, equity courts have set aside invalid assessment proceedings and relieved property from liens.[177] Bills to quiet title have also been permitted when the assessment was improperly levied.[178] An aggrieved property owner will seldom be given a writ of prohibition to halt the levy or collection of a special assessment,[179] and the likelihood of getting a declaratory judgment to the effect that assessment proceedings are invalid is as yet uncertain,[180] although it seemingly should be available.

Generally, it is no defense to a special assessment that the property owner considers the public improvement to have been executed

---

171 Town of Wake Forest v. Gulley, 213 N.C. 494, 196 S.E. 845 (1938); Howe v. City of Florence, 121 Kan. 202, 246 P. 510 (1926); Harwood v. Donovan, 188 Mass. 487, 74 N.E. 914 (1905); Hampton v. Gainesville, 64 Fla. 303, 60 S. 185 (1912). Note, 9 A.L.R. 634. *Contra*: Clovis v. Scheurich, 34 N. Mex. 227, 279 P. 876 (1929); People ex rel. Montgomery v. Maynard, 352 Ill. 283, 185 N.E. 620 (1933); Detroit Lumber Co. v. Arbitter, 252 Mich. 99, 233 N.W. 179 (1930), noted in 20 NAT. MUN. REV. 102 (1931).

172 Chapman v. Los Angeles, 26 Cal. App. (2d) 186, 79 P. (2d) 128 (1938); District of Columbia v. Thompson, 281 U.S. 25, 50 S.Ct. 172, 74 L.Ed. 677 (1930).

173 Strickland v. Stillwater, 63 Minn. 43, 65 N.W. 131 (1895). Note, 145 A.L.R. 1129.

174 Bush v. City of Beloit, 105 Kan. 79, 181 P. 615 (1919); Corby v. Detroit, 180 Mich. 208 146 N.W. 670 (1914); Sumner v. Detroit, 275 Mich. 689, 267 N.W. 769 (1936).

175 Reliance Automobile & Supply Co. v. City of Jackson, 244 Mich. 232, 221 N.W. 290 (1928); Forest Hill Cem. Co v. City of Ann Arbor, 303 Mich. 56, 5 N.W. (2d) 564 (1942).

176 Ashley v. City of Anchorage, 95 F. Supp. 189 (D.C. Alaska, 1951); White Chapel Memorial Assn. v. Willson, 260 Mich. 238, 244 N.W. 460 (1932); McKee v. Grand Rapids, 203 Mich. 527, 170 N.W. 100 (1918). And note specific authorization in GEN. STAT. KANSAS (1935) Sec. 60-1121.

177 Besack v. City of Beatrice, 47 N.W. (2d) 356 (Neb., 1951); Panfil v. Detroit, 246 Mich. 149, 224 N.W. 616 (1929); Thayer Lumber Co. v. City of Muskegon, 152 Mich. 59, 115 N.W. 957 (1908).

178 Grand Haven Basket Factory v. City of Grand Haven, 174 Mich. 279, 140 N.W. 609 (1913); Van Zanten v. City of Grand Haven, 174 Mich. 282, 140 N.W. 471 (1913).

179 LeConte v. Berkley, 57 Cal. 269 (1881). Note 115 A.L.R. 20

180 City and County of Denver v. Denver Land Co., 274 P. 743 (Colo., 1929), noted in 1 R. MTN. L. REV. 282 (1929).

faultily.[181] So long as the improvement was accepted by municipal authorities in good faith and there was substantial compliance with the contract a property owner will not be heard, but if there was fraud or mistake or if there was a deviation from the general character or location of the improvement, municipal acceptance will not prevent contest therefor by an assessed property owner.[182]

Enforcement Against the Property Owner

Statutes and charters regularly indicate the method of enforcement of a special assessment against property owners, and the statutory method is almost always exclusive.[183] Suits in assumpsit are common,[184] as are provisions for putting the assessment on the city or county tax list and collecting it in the same manner as taxes.[185] Practically everywhere unpaid assessments become a lien upon the property,[186] and statutes making special assessment liens superior to contractual liens have been sustained as constitutional.[187] The special assessment liens are regularly inferior to tax liens,[188] and the cases are divided as to whether junior or senior special assessment liens are prior over the other,[189] or whether there is any priority.[190] The liens are ordinarily

[181] Werninger v. Stephenson, 82 W.Va. 367, 95 S.E. 1035 (1918); Dixon v. Detroit, 86 Mich. 516, 49 N.W. 628 (1891); Eversole v. Walsh, 25 Ky. L. Rep. 784, 76 S.W. 358 (1903); Dawson v. Hipskind, 173 Ind. 216, 89 N.E. 863 (1909); O'Mara v. Town of Mt. Vernon, 299 Ky. 401, 185 S.W. (2d) 432 (1940); Chicago v. Sherman, 212 Ill. 498, 72 N.E. 396 (1904); People v. Whidden, 191 Ill. 374, ..1 N.E. 133 (1901). Notes, 56 L.R.A. 905, 27 L.R.A. (n.s.) 1086.

[182] McCain v. Des Moines, 128 Iowa 331, 103 N.W. 979 (1905); Gorman v. Johnson, 46 Ind. App. 672, 91 N.E. 971 (1910); Eiermann v. City of Milwaukee, 142 Wis. 606, 126 N.W. 53 (1910); Gage v. People, 200 Ill. 432, 65 N.E. 1084, 193 Ill. 316, 61 N.E. 1045 (1902); Eustace v. People, 213 Ill. 424, 72 N.E. 1089 (1905).

[183] Blythe v. Tulsa, 172 Okla. 586, 46 P. (2d) 310 (1935); Roxbury v. Nickerson, 114 Mass. 544 (1874). Note, 105 A.L.R. 1027.

[184] City of South Fulton v. Parker, 160 Tenn. 634; 28 S.W. (2d) 639 (1930); noted in 6 N. D. Lawy. 133 (1930); City Electric Co. v. Albuquerque, 32 N. Mex. 397, 258 P. 573 (1927); City of Sault Ste. Marie v. Minneapolis Rr., 192 Mich. 65, 158 N.W. 164 (1916).

[185] Page's Ohio Gen. Code Ann., Sec. 3892.

[186] N. Mex. S.A. (1941) ss. 14-3312, 14-3321; Page's Ohio Gen. Code Ann., Sec. 3842-3; Idaho Code (1945) Sec. 50-3503; Virginia Code (1950) Sec. 15-676; Wyoming Comp. S.A. (1945) Sec. 29-2021; Michigan S.A., Sec. 5.1840.

[187] State ex rel. Wall v. Coverdale 175 S. 492 (La. App. 1937); Albuquerque v. City Electric Co., 32 N. Mex. 401, 258 P. 574 (1927); State of Kansas ex rel. Frederick White v. City of Kansas City, 134 Kan. 165, 4 P. (2d) 422 (1931); German S. & L. Soc. v. Ramish, 138 Cal. 120, 69 P. 89, 70 P. 1067 (1902). Bowers, *Special Assessment v. Mortgage Lien,* 32 Yale L. J. 460 (1923). Note, 78 A.L.R. 513.

[188] First Bk. & Tr. Co. v. Ralston, 222 Ind. 584, 55 N.E. (2d) 115 (1944); Fletcher v. Oshkosh, 18 Wis. 228 (1864); Mo. Real Estate & Loan Co. v. Burri, 202 Mo. App. 242, 216 S.W. 570 (1919); Bosworth v. Anderson, 47 Idaho 697, 280 P. 227 (1929). Note, 65 A.L.R. 1379.

[189] Junior lien prior: Gould v. St. Paul, 120 Minn. 172, 139 N.W. 293 (1913); Woodill & Hulse Electric Co. v. Young, 180 Cal. 667, 182 P. 422 (1919); Jaicks v. Oppenheimer, 264 Mo. 693, 175 S.W. 972 (1915). Senior lien prior: Heller & Co. v. Duncan, 110 W.Va. 628, 159 S.E. 52 (1931); Parker-Washington Co. v. Corcoran, 150 Mo. App. 188, 129 S.W. 1031 (1910); Brady v.

suspended while the property is owned by the state or a political subdivision and revived upon return of the property to private ownership,[191] although there is authority that governmental ownership extinguishes liability and lien.[192] The liens can generally be foreclosed and the property sold by the municipality and under many statutes by the certificate holders who have financed the improvement.[193] The right to foreclose will very often be barred by the state statute of limitations,[194] although there are holdings to the effect that the statute of limitations does not apply to municipalities enforcing special assessments.[195] Although the effect of the contract clause of the United States Constitution may today be no more than due process there remains the possibility that statutes modifying the rights of special assessment lienholders may be unconstitutional as impairing the obligation of contracts.[196]

There is no constitutional possibility of making a non-resident property owner personally liable for a special assessment,[197] and many cases deny the possibility of imposing personal liability for assessments even upon residents,[198] although there are contra cases.[199] Contractual

Burke, 90 Cal. 1, 27 P. 52 (1891); Des Moines Brick Mfg. Co. v. Smith, 108 Iowa 307, 79 N.W. 77 (1899); Scott-McClure Land Co. v. City of Portland, 62 Ore. 462, 125 P. 276 (1912). Notes, 5 A.L.R. 1301, 99 A.L.R. 1478.

[190] Hollenbeck v. City of Seattle, 136 Wash. 508, 240 P. 916 (1925), noted in 1 WASH. L. REV. 215 (1926); Citizens Trust and Savings Bank v. Fletcher American Co., 207 Ind. 328, 190 N.E. 868 (1934). noted in 48 HARV. L. REV 1028 (1935); Willard v. Morton, 50 Wyo. 72, 59 P. (2d) 338 (1936).

[191] Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N.E. 20 (1908); Raisch v. New York, 235 App. Div. 706, 255 N.Y.S. 589 (1932).

[192] Klatt v. Detroit, 162 Mich. 186, 127 N.W. 409 (1910); City of Pleasant Ridge v. Royal Oak Twp., 44 N.W. (2d) 333 (Mich., 1950).

[193] BURNS IND. STAT. ANN. (1950), Sec. 48-2711; WYOMING COMP. S.A. (1945), Sec. 29-2034; N. MEX. S.A. (1941), Sec. 14-3314; Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N.E. 20 (1908); Hann v. City of Clinton, 131 F. (2d) 978 (10th Cir., 1942); 1st Natl. Bank of Columbus v. City of Weiser, 30 Idaho 14, 166 P. 213 (1916); Ft. Scott Public Utility Co. v. Armour, 115 Kan. 152, 222 P. 93 (1924).

[194] Raleigh v. Mechanics and Farmers Bk., 223 N.C. 286, 26 S.E. (2d) 573 (1943), discussed by Abbott, *The Collectibility of Special Assessments more than Ten Years Delinquent*, 22 N.C. L. REV. 123 (1944); Altman v. Kilburn, 45 N. Mex. 453, 116 P. (2d) 812, 136 A.L.R. 554 (1941); Knoxville v. Gervin, 169 Tenn. 532, 89 S.W. (2d) 348, 103 A.L.R. 877 (1936); Read v. Abe Rosenblum & Sons, 115 Ind. App. 200, 58 N.E. (2d) 376 (1944); Notes, 113 A.L.R. 1168, 114 A.L.R. 399.

[195] Seeck v. Lebanon, 148 Ore. 291, 36 P. (2d) 334 (1934); Note, 103 A.L.R. 885.

[196] W. B. Worthen Co. v. Kavanaugh, 295 U.S. 56, 55 S.Ct. 555, 79 L. Ed. 1298 (1935), noted in 33 MICH. L. REV. 1276 (1935). Compare Municipal Investors Assn. v. City of Birmingham, 316 U.S. 153, 62 S.Ct. 975, 86 L. Ed. 1341 (1942).

[197] Dewey v. Des Moines, 173 U.S. 193, 19 S.Ct. 379, 43 L. Ed. 665 (1899).

[198] City of E. St. Louis v. Ill. Trust Co., 372 Ill. 120, 22 N.E. (2d) 944 (1939), noted in 8 GEO. WASH. L. REV. 982 (1940); City of Brookings v. Natwick, 22 S.D. 322, 117 N.W. 376 (1908); Asberry v. City of Roanoke, 91 Va. 562, 22 S.E. 360 (1895); Craw v. Tolono, 96 Ill. 255, 36 Am. Rep. 143 (1880); Meyer v. City of Covington, 103 Ky. 546, 45 S.W. 769 (1898); Taylor v. Palmer, 31 Cal. 240 (1866).

[199] Burlington v. Quick, 47 Iowa 222 (1877); Shambaugh v. Bellar, 54 S.W. (2d) 550 (Tex. Civ. App., 1932); Gest v. Cincinnati, 26 Ohio St. 275 (1875);

liability is sometimes created and this personal liability is of course valid.[200] There are often provisions for going against other property of the resident owner,[201] and the United States Supreme Court seemingly will not consider such procedure unconstitutional.[202]

Where a special assessment proves insufficient, statutes customarily provide that the municipality may make additional pro rata assessments,[203] but where the deficiency is due to non-payment by some proprety owners, others who have paid cannot be subjected to a re-assessment.[204]

MUNICIPAL LIABILITY

Although there can, of course, be municipal liability by the terms of its contract with holders of assessment bonds, warrants or certificates,[205] municipalities are generally not liable upon assessment obligations payable out of a special fund when, through no fault of the city the fund proves inadequate.[206] But a municipal corporation is liable to bond or certificate holders when it has collected special assessments and diverted these funds to other municipal purposes.[207] And municipalities have been held liable where they refused or neglected to levy an assessment,[208] where the assessment imposed was inadequate to cover

City of St. Mary's v. Locke, 73 W.Va. 30, 80 S.E. 841 (1913); In re Vacation of Centre St., 115 Pa. 247, 8 A. 56 (1886). The Ohio courts permit personal liability, but limit it to the extent of interest in the property assessed. Brown v. Russell, 20 Ohio App. 101, 151 N.E. 793 (1925).

200 Feder v. Gary St. Bk., 98 Ind. App. 513, 186 N.E. 379 (1933), noted in 19 IOWA L. REV. 481 (1934); Wayne Co. Savings Bank v. Gas City Land Co., 156 Ind. 662, 59 N.E. 1048 (1901).

201 Mich. Lk. Superior Pwr. Co. v. Atwood, 126 Mich. 651, 86 N.W. 139 (1901).

202 Nickey v. Mississippi, 292 U.S. 393, 54 S.Ct. 743, 78 L.Ed. 1323 (1934), permitting resort to property other than that taxed to enforce collection of non-resident's ad valorem tax.

203 MINN. STAT. (1945), Sec. 412.28; MICH. S.A., Sec. 5.1845; JONES ILL. S.A., Sec. 21.2269; MCKINNEY'S N.Y. CONSOL. LAWS, ch. 53, Sec. 162. Re Lower Baraboo River Drainage Dist., 199 Wis. 230, 225 N.W. 331 (1929). Note, 63 A.L.R. 1179.

204 Wood v. Village of Rockwood, 44 N.W. (2d) 163 (Mich., 1950); and see Chicago v. People ex rel. Norton. 56 Ill. 327 (1870).

205 City of Memphis v. Brown, 87 U.S. 289, 22 L. Ed. 264 (1873); Hitchcock v. Galveston, 96 U.S. 341, 24 L. Ed. 659 (1877); Barber Asphalt Pav. Co. v. Des Moines, 191 Iowa 762, 183 N.W. 456 (1921); Garden City v. Trigg, 57 Kan. 632, 47 P. 524 (1897).

206 Bankers Trust & Sav. Bk. v. Village of Anamoose, 51 N.D. 596, 200 N.W. 103 (1924); Meyer v. City and Co. of San Francisco, 150 Cal. 131, 88 P. 722 (1907).

207 Hammond v. Melville, 114 Ind. App. 602, 52 N.E. (2d) 845 (1944); Allen v. Davenport, 107 Iowa 90, 77 N.W. 532 (1898); Lansing v. Van Gorder, 24 Mich. 456 (1872); Pine Tree Lmbr. Co. v. City of Fargo, 12 N.D. 360, 96 N.W. 357 (1903); Morris v. City of Sheridan, 86 Ore. 224, 167 P. 593 (1917); Matapan N. Bk. v. Seattle, 115 Wash. 596, 197 P. 789 (1921). Cf. People ex rel, Anderson v. Village of Bradley, 288 Ill. App. 162, 6 N.E. (2d) 240 (1937), noted in 15 CHI-KENT L. REV. 243 (1937). Note 107 A.L.R. 1354.

208 Heller v. Garden City, 58 Kan. 263, 48 P. 841 (1897); Barber Asphalt Pav. Co. v. Denver, 72 F. 336 (8th Cir., 1896); City of Mankato v. Barber Asphalt Pav. Co., 142 F. 329 (8th Cir., 1905); Dennis v. City of Williamson, 80 Ore. 486, 157 P. 799 (1916); City of Leavenworth v. Stille, 13 Kan. 400 (1874); City of Atchison v. Byrnes, 22 Kan. 59 (1879).

the cost of the improvement,[209] where there was a deficiency because the assessment was levied upon exempt property[210] or where they have after the assessment purchased the property themselves,[211] where the amount imposed was partially invalid because in excess of benefits,[212] as well as where the municipalities refused or neglected to collect the assessment.[213] Occasional cases deny recovery against a city which has neglected to collect an asessment on the ground that the contract specifically negated any municipal liability.[214] Although the cases are divided as to whether a municipality is liable when special assessment proceedings are defective,[215] the majority and better cases recognize liability.[216] When the property assessed has been seized and sold by either the investors or the city, municipalities are seldom liable for deficiencies.[217]

---

[209] McCann v. Albany, 11 App. Div. 378, 42 N.Y.S. 94 (1896); Nolan v. Reading, 235 P. 367, 84 A. 390 (1912).

[210] Barber Asphalt Pav. Co. v. Harrisburg, 64 F. 283 (3rd Cir., 1894); Bucroft v. Council Bluffs, 63 Iowa 646, 19 N.W. 807 (1894); Maher v. People, 38 Ill. 267 (1865); Leavenworth v. Laing, 6 Kan. 167 (1870); Chicago v. People, 56 Ill. 327 (1870); Louisville v. Leatherman, 99 Ky. 213, 35 S.W. 625 (1896).

[211] Atchison v. Friend, 78 Kan. 30, 96 P. 348 (1908).

[212] Barber Asphalt Pav. Co. v. Denver, 72 F. 336 (8th Cir., 1896); Chicago v. People, 56 Ill. 327 (1870).

[213] J. W. Turner Impt. Co. v. Des Moines, 155 Iowa 592, 136 N.W. 656 (1912); Atchison v. Leu, 48 Kan. 138, 29 P. 467 (1892); Rogers v. Omaha, 82 Neb. 118, 117 N.W. 119 (1908); Hauge v. Des Moines, 207 Iowa 1209, 224 N.W. 520 (1929). So, where the city has failed to take reasonable steps to collect, Hauge v. Des Moines, supra; Barber Asphalt Pav. Co. v. Denver, 72 F. 336 (8th Cir., 1896); Gray v. City of Santa Fe, 135 F. (2d) 374 (10th Cir., 1941), where the city failed to have the property struck off to it, as authorized by statute, when the county sold it at delinquent tax sale; Grand Lodge v. Bottineau, 58 N.D. 740, 227 N.W. 363 (1929), noted in 19 NAT. MUN. REV. 55 (1930), where the city allowed paving certificates to be cancelled in a suit against it without defending on the ground that the contractor had performed; Western Asphalt Pav. Corp. v. City of Marshalltown, 203 Iowa 1324, 214 N.W. 687 (1927), where the city cancelled the lien of the property owner; Ward v. Lincoln, 87 Neb. 661, 128 N.W. 24 (1910), where the city compromised for less than the amount due; Sheaffe v .Seattle, 18 Wash. 298, 51 P. 385 (1897), where the city lost jurisdiction to reassess; Barber Asphalt Pav. Co. v. Des Moines, 191 Iowa 762, 183 N.W. 456 (1921); McEwan v. City of Spokane, 16 Wash. 212, 47 P. 433 (1896).

[214] Gagnon v. City of Butte, 75 Mont. 279, 243 P. 1085 (1926); Conlin v. San Francisco, 99 Cal. 17, 33 P. 753 (1893); Goodrich v. Detroit, 12 Mich. 279 (1864).

[215] Denying liability: Moylan v. New Orleans, 32 La. Ann. 673 (1880); Moore v. Nampal, 276 U.S. 536, 48 S.Ct. 340, 72 L.Ed. 688 (1928); Wheeler v. Poplar Bluff, 149 Mo. 36, 49 S.W. 1088 (1899).

[216] Sleeper v. Bullen, 6 Kan. 183 (1870); Leavenworth v. Stille, 13 Kan. 539 (1874); Barber Asphalt Pav. Co. v. Des Moines, 191 Iowa 762, 183 N.W. 456 (1921); Rielly v. City of Albany, 112 N.Y. 30, 19 N.E. 508 (1889); Barber Asphalt Pav. Co. v. Denver, 72 F. 336 (8th Cir., 1896); Portland Lumbering Co. v. East Portland, 18 Ore. 21, 22 P. 536 (1889); Louisville v. Hyatt, 5 B. Mon. 199 (Ky., 1844); Morgan v. Pointe Coupee, 11 La. 157 (1837).

[217] Morris v. City of Sheridan, 86 Ore. 224, 167 P. 593 (1917); New Albany v. Sweeney, 13 Ind. 245 (1859); Creighton v. Toledo, 18 Ohio St. 447 (1868). Note also Municipal Investors Ass'n. v. City of Birmingham, 316 U.S. 153, 62 S.Ct. 975, 86 L.Ed. 1341 (1942), denying reassessment. Generally see Notes, 44 HARV. L. REV. 610 (1931); 13 IOWA L. BULL. 81 (1927); 38 A.L.R. 1271; 51 A.L.R. 973; 172 A.L.R. 1030.

Statutory remedies are generally exclusive and courts show no willingness to appoint receivers to take over and administer the municipality's assets.[218] At times creditor suits for money judgments are denied on the ground that the proper remedy is mandamus.[219] This writ is occasionally granted to force an assessment or assessments by municipal authorities,[220] to compel collection of the assessment,[221] to require municipal authorities to raise by taxation the amount of deficiency from a special assessment,[222] and to order public officers to turn over to bondholders all payments received from property owners.[223] Suits for accounting against the municipality are possible, as well.[224] But there is little probability of personal liability upon municipal officers who fail to impose or collect special assessments,[225] absent statutory responsibility.[226]

---

[218] State ex rel. Lynch v. District Court, 41 N. Mex. 658, 73 P. (2d) 333 (1937). Note, 113 A.L.R. 757.

[219] Peake v. New Orleans, 139 U.S. 342, 11 S.Ct. 541, 35 L. Ed. 131 (1891); Pontiac v. Talbot Pav. Co., 94 F. 65 (7th Cir., 1899); Brood v. City of Moscow, 15 Idaho 606, 99 P. 101 (1908); Blanchar v. Caspar, 81 F. (2d) 452 (10th Cir., 1936).

[220] Cowan v. State ex rel. Blancher, 5 Wyo. 427, 100 P. (2d) 427 (1940); City of Pleasant Ridge v. Royal Oak Twp., 44 N.W. (2d) 333 (Mich., 1950); People ex rel. Talbot Pav. Co. v. City of Pontiac, 185 Ill. 437, 56 N.E. 1006 (1900). Cf. State ex rel. Johnson v. City of Dayton, 200 Wash. 91, 93 P. (2d) 909 (1939).

[221] People ex rel. Ready v. Mayor of Syracuse, 144 N.Y. 63, 38 N.E. 1006 (1894).

[222] State ex rel. v. Brooklyn, 126 Ohio St. 459, 185 N.E. 841 (1933); Klemm v. Davenport, 100 Fla. 627, 129 S. 904 (1930), noted in 19 NAT. MUN. REV. 849 (1930). Such a tax is not violative of bans on double taxation. Wickliffe v. City of Greenville, 170 Ky. 528, 186 S.W. 476 (1916); Colby v. City of Medford, 85 Ore. 485, 167 P. 487 (1917). See also Hallahan v. City of Port Angeles, 161 Wash. 353, 297 P. 149 (1931), upholding a compulsory local improvement guaranty fund built up by taxation of all property in the city.

[223] Conter v. Lincoln Nat. Life Ins. Co., 212 Ind. 125, 8 N.E. (2d) 232 (1937); Wood v. Village of Rockwood, 44 N.W. (2d) 163 (Mich., 1950); BURNS IND. STAT. ANN., Sec. 48-4406.

[224] Grand Carniolian Slovenian Catholic Union v. Rockdale, 314 Ill. App. 308, 41 N.E. (2d) 218 (1942).

[225] Newman v. Sylvester, 42 Ind. 106 (1873).

[226] Such as BURNS IND. STAT. ANN., Sec. 48-4410.